Nos. 76-777, 76-933, 76-934 and 76-935

In the Supreme Court of the United States

OCTOBER TERM, 1976

PEGGY J. CONNOR, ET AL., APPELLANTS

v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL., APPELLANTS

v.

PEGGY J. CONNOR, ET AL. AND UNITED STATES OF AMERICA

UNITED STATES OF AMERICA, APPELLANT

v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

PEGGY J. CONNOR, ET AL., APPELLANTS

v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

BRIEF FOR THE UNITED STATES

DANIEL M. FRIEDMAN,
Acting Solicitor General,
J. STANLEY POTTINGER,
Assistant Attorney General,
LAWRENCE G. WALLACE,
Deputy Solicitor General,
HOWARD E. SHAPIRO,
Assistant to the Solicitor General,

BRIAN K. LANDSBERG,
JOHN C. HOYLE,
JESSICA DUNSAY SILVER,
VINCENT F. O'ROURKE,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

INDEX

	Page
Opinions below	2
Jurisdiction	2
Constitutional provisions and statutes involved	3
Questions presented	4
Statement	4
A. The basis for reapportionment in Mississippi	5
B. Racial discrimination in voting practices in Mississippi	7
C. Procedural history of this litigation	11
1. Invalidation of the 1962 and 1967 Reapportionment Acts	11
2. The 1971 temporary plan ordered by the district court	11
3. This Court's reversal of the district court's approval of the 1975 legislative plan	13
a. The 1975 legislative plan	14
b. Reversal of the district court's approval	15
4. The 1975 temporary plan and the district court's intent to adopt a final plan	16

Statement—Continued

	Page
a. Objections to reliance on the 1971 court-ordered temporary plan and the 1975 legislative enactment	16
b. The 1975 temporary plan	17
5. Postponement of the district court's final plan	18
6. This Court's direction that the district court adopt a final plan	19
7. The district court's final judgment	20
D. The district court's plan	21
1. The district court's criteria for decision	21
2. The Senate and House plans	22
3. Alternative plans offered by the plaintiffs	24
4. Modifications of the plan by the district court	25
E. Requests for special elections	26
Summary of argument	28
Argument	33
I. The district court's final plan is not a proper equitable remedy because it perpetuates the effects of past racial discrimination in Mississippi voting and legislative apportionment	33

Argument—Continued

	Page
A. Court-ordered reapportionment plans may not unnecessarily dilute minority voting rights or cancel minority voting strength	33
B. The effects of the past discrimination against blacks in the electoral process continues today	39
1. Racial bloc voting in Mississippi	39
2. The past as a disincentive to black political participation	41
3. The effect of past discrimination on recent elections	43
4. The dilutive impact of racial bloc voting on black voting rights	45
C. The remedy for the dilutive effects of past discrimination and bloc voting is to avoid unnecessarily submerging black voting age population concentrations in white majority districts	51
D. The district court's plan unnecessarily fragments concentrations of black voters and submerges them into white majority districts	59
1. The dilutive effects of the 1975 court-ordered temporary plan	59
a. The 1975 legislative plan	60

Argument—Continued

	Page
b. The 1975 court-ordered temporary plan under which the current legislature was elected	62
2. The final plan's elimination of unnecessary dilution in many districts by creation of single-member districts throughout the state	66
3. The final plan's failure to remedy unnecessary dilution in six counties	74
a. Hinds County	75
b. Warren County	82
c. Forrest County	86
d. Washington County	88
e. Jefferson and Claiborne Counties	90
II. With formulation of the final plan, special elections are required in certain districts to remedy, without further delay, the dilution existing under prior plans	92
A. The district court's criteria for refusing to order special elections were erroneous	95

Argument—Continued

	Page
B. Special elections should be ordered in districts changed to black voting age majorities, and in districts in which the change from multi-member to single-member representation was accompanied by a significant increase in black voting strength	97
1. Changes from white to black voting age majorities	97
2. Significant increases in black voting age population	101
3. Other considerations	102
Conclusion	103
Appendices:	
Table of Contents	IA
A	1a
B	39a
C	45a
D	73a

CITATIONS

Cases:

Adickes v. *Kress & Co.*, 398 U.S. 144	44
Alexander v. *Board of Education*, 396 U.S. 19, vacating and remanding *United States* v. *Hinds County School Board*, 417 F. 2d 852, certiorari denied, 396 U.S. 1032	45

Cases—Continued Page

Allen v. *State Board of Education*, 393 U.S. 544 55
Beer v. *United States*, 425 U.S. 130 ..... 19, 30, 49, 56, 57
Board of Education v. *Swann*, 402 U.S. 43 ..... 55, 57
Brown v. *Board of Education (Brown I)*, 347 U.S. 483 45
Brown v. *Board of Education (Brown II)*, 349 U.S. 294 45
Burns v. *Richardson*, 384 U.S. 73 ..... 36, 52
Chapman v. *Meier*, 420 U.S. 1 ..... 28, 34, 35, 36, 54, 61, 75
City of Petersburg v. *United States*, 354 F. Supp. 1021, affirmed, 410 U.S. 962 36, 55
City of Richmond v. *United States*, 422 U.S. 358 ..... 36, 55
Connor v. *Coleman*, 425 U.S. 675 ..... 5, 13, 16, 20, 93
Connor v. *Johnson*, 256 F. Supp. 962 11
Connor v. *Johnson*, 330 F. Supp. 506 11
Connor v. *Johnson*, 330 F. Supp. 521 12
Connor v. *Johnson*, 402 U.S. 690 ..... 5, 12, 36, 78
Connor v. *Waller*, 421 U.S. 656 ..... 5, 15, 35
Connor v. *Waller*, 396 F. Supp. 1308 ..... 13, 15, 46
Connor v. *Williams*, 404 U.S. 549 ..... 5, 13, 19, 36, 78
Dallas County v. *Reese*, 421 U.S. 477 51
Drum v. *Seawell*, 249 F. Supp. 877, affirmed, 383 U.S. 831 96
Dunn v. *Blumstein*, 405 U.S. 330 ..... 45, 47, 75
East Carroll Parish School Board v. *Marshall*, 424 U.S. 636 ..... 19, 28, 35, 36, 51, 54

Cases—Continued Page

Fortson v. *Dorsey*, 379 U.S. 433 ..... 28, 36
Georgia v. *United States*, 411 U.S. 526 34
Graves v. *Barnes*, 343 F. Supp. 704, affirmed *sub nom. White* v. *Regester*, 412 U.S. 755 ..... 37, 50, 51, 53, 54, 57
Hadnott v. *Amos*, 394 U.S. 358 96
Hall v. *Issaquena County*, 453 F. 2d 404 96
Hamer v. *Campbell*, 358 F. 2d 215, certiorari denied, 385 U.S. 851 96
Howard v. *Adams County Board of Supervisors*, 453 F. 2d 455, certiorari denied, 407 U.S. 925 38
Keller v. *Gilliam*, 454 F. 2d 55 96
Kirksey v. *Board of Supervisors of Hinds County*, 528 F. 2d 536, reheard September 9, 1976 ..... 57, 76
Kirksey v. *Board of Supervisors of Hinds County*, 402 F. Supp. 658 76
Kramer v. *Union Free School District, No. 15*, 395 U.S. 621 ..... 45, 47, 48
Louisiana v. *United States*, 380 U.S. 145 54
Mahan v. *Howell*, 410 U.S. 315 ..... 34, 36
Mann v. *Davis*, 238 F. Supp. 458, affirmed *sub nom. Hughes* v. *WMCA*, 374 U.S. 694 96
Moore v. *Leflore County Board of Election Commissioner*, 502 F. 2d 621 53
Morrow v. *Crisler*, 479 F. 2d 960, affirmed and remanded, 491 F. 2d 1053, certiorari denied, 419 U.S. 895 45
Perkins v. *Mathews*, 400 U.S. 379 ..... 35, 55
Ratliff v. *Beale*, 74 Miss. 247, 20 So. 865 ..... 8, 9

Cases—Continued

	Page
Reynolds v. *Sims*, 377 U.S. 533	34, 45-46, 47, 55, 93
Smith v. *Allwright*, 321 U.S. 649	45
Smith v. *McGee*, S.D. Miss., Civ. A. No. 4483, decided May 12, 1976	77
South v. *Peters*, 339 U.S. 276	47
South Carolina v. *Katzenbach*, 383 U.S. 301	7
Stewart v. *Waller*, 404 F. Supp. 206	44
Swann v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1	55
Taylor v. *McKeithen*, 407 U.S. 191	38
Tombs v. *Fortson*, 241 F. Supp. 65, affirmed, 384 U.S. 210	96
Toney v. *White*, 488 F. 2d 310	96
Town of Sorrento v. *Reine*, 425 U.S. 946	96
United Jewish Organization of Williamsburgh, Inc. v. *Carey*, No. 75-104, certiorari granted, 423 U.S. 945, argued October 6, 1976	19
United States v. *City of Jackson, Mississippi*, 318 F. 2d 1	44
United States v. *Duke*, 332 F. 2d 759	8-9
United States v. *Lynd*, 349 F. 2d 790	9
United States v. *Lynd*, 301 F. 2d 818, certiorari denied, 371 U.S. 893	8, 9
United States v. *McClellan*, 248 F. Supp. 62	9
United States v. *State of Mississippi*, 229 F. Supp. 925, reversed and remanded, 380 U.S. 128	9, 10
United States v. *Montgomery County Board of Education*, 395 U.S. 225	55

Cases—Continued

	Page
Village of Arlington Heights v. *Metropolitan Housing Development Corp.*, No. 75-616, decided January 11, 1977	81
Wade v. *Mississippi Cooperative Extension Service*, 528 F. 2d 508	45
Wallace v. *House*, 515 F. 2d 619, vacated on other grounds, 425 U.S. 947	35, 50, 56
Whitcomb v. *Chavis*, 403 U.S. 124	28, 36, 47, 48, 49, 56
White v. *Regester*, 412 U.S. 755	28, 36, 37, 46, 47, 54, 56, 92, 93
Wright v. *Rockefeller*, 376 U.S. 52	54
Zimmer v. *McKeithen*, 485 F. 2d 1297, affirmed on other grounds *sub nom. East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636	51, 53

Constitution, statutes, and rule:

United States Constitution:	
Fourteenth Amendment	3, 5, 11, 48
Section 1	3
Section 5	3
Fifteenth Amendment	4, 5, 7, 11, 29, 48
Section 1	4
Section 5	4
Voting Rights Act of 1965, 79 Stat. 437, as amended, 42 U.S.C. 1973, *et seq.*:	
Section 2, 42 U.S.C. 1973	16
Section 4, 42 U.S.C. 1973b	34
Section 5, 42 U.S.C. 1973c	15, 16, 31, 34, 55, 77
Section 12, 42 U.S.C. 1973j(d)	16

Constitution, statutes, and rule—Continued Page

42 U.S.C. 1971(a)(1) 16
42 U.S.C. 1971(c) 16
42 U.S.C. 2000h-2 16

Miss. Const. (1890):

Art. 8, § 207 45
Art. 12, § 243 9
Art. 12, § 244 8
Art. 13, § 254 ..... 6, 21
Art. 13, § 255 6
Art. 14, § 263 45

Miss. Laws, 1902, Ch. 66 10
Miss. Laws, 1954, Ch. 427 8
Miss. Laws, 1955, Ex. Sess., Ch. 133 8
Miss. Code Ann. §§ 23-3-69, 23-5-203 (1972) 48
Miss. Code Ann., § 3129 (Recompiled 1956) 10
Fed. R. Civ. P., Rule 59 18

Miscellaneous:

Bonapfel, *Minority Challenges to At-Large Elections: The Dilution Problem*, 10 Ga. L. Rev. 353 (1976) 50, 58
Garner, *Reconstruction in Mississippi*, (1968 ed.) 7
Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443, before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Cong., 1st Sess. (1975) 41

Miscellaneous—Continued Page

6 *National Roster of Black Elected Officials*, Joint Center for Political Studies, Washington, D.C. (August 1976) 7, 44
Note, *Compensatory Racial Reapportionment*, 25 Stan. L. Rev. 84 (1972) 57, 58
Note, *The Supreme Court 1970 Term*, 85 Harv. L. Rev. 3 (1971) 49
Schwartz, *Statutory History of the United States: Civil Rights* (1970) 48
United States Bureau of the Census, *Census of Population 1970*, Volume I, *Characteristics of the Population*, Part 26 42
Voting in Mississippi, A Report of the United States Commission on Civil Rights (1965) 7, 8, 9, 10

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-777

PEGGY J. CONNOR, ET AL., APPELLANTS

v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

No. 76-933

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL., APPELLANTS

v.

PEGGY J. CONNOR, ET AL. AND UNITED STATES OF AMERICA

No. 76-934

UNITED STATES OF AMERICA, APPELLANT

v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

No. 76-935

PEGGY J. CONNOR, ET AL., APPELLANTS

v.

CLIFF FINCH, GOVERNOR OF THE STATE OF MISSISSIPPI, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The district court's opinions of August 24, 1976 (III A. 94-116),[1] and September 8, 1976 (III A. 117-138) are reported at 419 F. Supp. 1072 and 1089. The district court's opinion of November 12, 1976 (III A. 220-231) is reported at 422 F. Supp. 1014. Its final judgment (III A. 232-248) and order amending previous judgment (III A. 279-282) are not reported.

JURISDICTION

In this reapportionment case, a three-judge district court held that the Mississippi legislature was unconstitutionally apportioned, and extensive litigation followed. The United States intervened as a party plaintiff on June 11, 1975 (II A. 128). The final judgment of the district court establishing a final legislative reapportionment plan for the Mississippi Senate and Mississippi House of Representatives was entered on November 18, 1976 (III A. 232-248), and was amended on December 21, 1976 (III A. 279-282), after consideration of plaintiffs' timely objections and motion to alter or amend judgment (III A. 250-258). The United States filed its notice of appeal on December 28, 1976 (III A. 284). This Court noted probable jurisdiction of the United States' appeal on January 17, 1977 (III A. 286).

[1] As used herein, "I A." indicates volume I of the Appendix, "II A." indicates volume II and "III A." indicates volume III. References to other documents contained in the record, but not included in the appendix, are cited by document number, *e.g.*, R. Doc. 1.

The jurisdiction of this Court is invoked under 28 U.S.C. 1253. *Connor* v. *Williams*, 404 U.S. 549; *Connor* v. *Waller*, 421 U.S. 656.[2]

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fourteenth Amendment to the United States Constitution provides in part:

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> * * * * *
>
> SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

[2] On December 8, 1976, this Court noted probable jurisdiction (III A. 285) in *Connor* v. *Finch*, No. 76-777, an application by the private plaintiffs in this case which the Court, at the suggestion of the United States, treated as an expedited appeal. On January 17, 1977, the Court also noted probable jurisdiction in other appeals from the same judgment, No. 76-933, an appeal by the defendant officials, and No. 76-935, an additional appeal by the private plaintiffs, and consolidated the cases (III A. 286). The Court established an expedited schedule, requiring that all parties file briefs by February 7, 1977, and responsive briefs by February 21, 1977, and set oral argument for February 28, 1977 (III A. 286).

The Fifteenth Amendment provides:

> SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
>
> SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

Pertinent provisions of the applicable statutes appear in Brief Appendix D.[3]

QUESTIONS PRESENTED

1. Whether the district court's final plan reapportioning the Mississippi legislature improperly dilutes the voting strength of black citizens in certain districts.

2. Whether special elections are required in districts of the Mississippi legislature in which the final apportionment plan ordered by the district court to be effective in the 1979 elections (for the 1980 legislative session) will substantially remedy the dilution of the voting rights of black citizens occurring in those districts under preceding apportionment plans.

STATEMENT

This case involves the reapportionment of the Mississippi legislature. It is before the Court for the

[3] Appendices A, B, C, and D to this brief appear infra, pp. 1a-75a.

fifth time,[4] following a hearing pursuant to this Court's direction of May 19, 1976, in *Connor* v. *Coleman*, 425 U.S. 675.

In 1965 private plaintiffs filed this suit alleging that the 1962 apportionment of the legislature violated the Fourteenth and Fifteenth Amendments (I A. 37-46). The litigation resulted in the invalidation of reapportionment plans adopted by the state legislature in 1962, 1966, 1971, and 1975. Elections were conducted under temporary plans formulated by the district court in 1971 and 1975 which included multimember districts. The present appeals concern (1) the court's final apportionment plan, adopted in 1976, which will govern the election of the legislature in 1979; and (2) the need for special elections in certain districts for seats in the legislature elected under the district court's 1975 temporary plan, which will sit through 1979. The United States will address these issues as they affect the rights of black voters in Mississippi.

A. The Basis For Reapportionment In Mississippi.

The Mississippi legislature consists of a 52-member Senate and a 122-member House of Representatives. Miss. Const. Art. 13, §§ 254, 255. On the basis of the 1970 census,[5] the legislature must be apportioned

[4] See *Connor* v. *Johnson*, 402 U.S. 690; *Connor* v. *Williams*, 404 U.S. 549; *Connor* v. *Waller*, 421 U.S. 656; *Connor* v. *Coleman*, 425 U.S. 675.

[5] All statistics cited in this brief are derived from 1970 census data, as described in Brief Appendix B.

among a total state population of 2,216,912, consisting of 36.8 percent blacks, 62.8 percent whites, and 0.4 percent other races.[6] The state constitution prescribes that legislative districts should be drawn within county lines. Miss. Const. Art. 13, §§ 254, 255. There are 82 counties in the state, among which there is wide population variation. The arithmetic ideal is 42,633 for Senate districts and 18,171 for House districts. There are 70 counties with a population of less than 42,633 and 12 with more than that number. There are 39 counties with a population of less, and 43 with more, than 18,171. To minimize variance among districts it is therefore necessary either to divide counties and combine portions with other counties, thus disregarding county boundaries, or to resort to multi-member districting.

The distribution of blacks in the state also varies. There are 25 counties with a black population majority and 17 with a black voting age majority. Of the 12 counties with population in excess of 42,633, the ideal for Senate districts, two have black population majorities and one has a black voting age majority. Of counties with less than the Senate ideal, 23 have black population majorities and 16 have black voting age majorities. Of the 43 counties with populations in excess of 18,171, the ideal for House districts, 12 have black population majorities and eight have black voting age majorities. Of counties with less than the House ideal, 13 have black population majorities and nine have black voting age majorities.

---

[6] Blacks comprise 31.4 percent of the voting age population (18 years or older).

B. Racial Discrimination In Voting Practices In Mississippi.

The Fifteenth Amendment to the United States Constitution was ratified in 1870. Within a short time Mississippi and other states of the Confederacy began to enact legislation designed to prevent blacks from influencing the electoral process. *South Carolina* v. *Katzenbach*, 383 U.S. 301, 310.

The success of the disfranchising endeavor in Mississippi is demonstrated by the fact that there were at least thirty-one black representatives and five black senators in the 1870 Mississippi legislature[7] and fifty-five black representatives and nine black senators in the legislature elected in 1873,[8] while between 1900 and 1975 only one black candidate was elected to the legislature (R. Doc. 154, Hearing of May 7, 1975, Tr. at 46). There are currently only four black members of the Mississippi House and no black members of the Senate.[9] Similarly, in 1867 approximately 66.9 percent of the black voting age population was registered to vote, *Voting in Mississippi* 8, A Report of the United States Commission on Civil Rights (1965) (hereinafter cited as *Voting in Mississippi*), while in 1964 only 6.4 percent of the black voting age population was registered. *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 313.

---

[7] Garner, *Reconstruction in Mississippi* 269-270 (1968 ed.).

[8] Garner, *supra*, at 294.

[9] 6 *National Roster of Black Elected Officials* 112, Joint Center for Political Studies, Washington, D.C. (August 1976).

Mississippi employed four devices in discriminating against black participation in the electoral process: (1) a racially discriminatory apportionment of the legislature, (2) an annual poll tax, (3) a literacy test, and (4) a "whites only" primary system. See Appendix A to this Brief (cited Brief App. A).

All four of these methods have been utilized in concert during the last eighty-five years. Although racially discriminatory apportionment was first utilized in the 1889 apportionment and the 1890 Constitutional Convention of Mississippi, which "[w]ithin the field of permissible action under the limitations imposed by the federal constitution * * * swept the circle of expedients to obstruct the exercise of the franchise by the negro race," *Ratliff* v. *Beale*, 74 Miss. 247, 266, 20 So. 865, 868, it was not the primary means of discrimination; the literacy test, the poll tax, and the white primary were far more effective in disfranchising black voters. *Voting in Mississippi*, *supra*, at 8. These devices made racially discriminatory apportionment moot.

The literacy test, as adopted by the 1890 Convention, Miss. Const. Art. 12, § 244, and as subsequently amended, Miss. Laws, 1954, Ch. 427; Miss. Laws, 1955, Ex. Sess., Ch. 133, enabled registrars to disfranchise black voters by (1) requiring blacks to read and interpret more difficult sections of the Constitution than those read and interpreted by whites; *United States* v. *Lynd*, 301 F. 2d 818, 822 n. 1 (C.A. 5), certiorari denied, 371 U.S. 893; *United States*

v. *Duke*, 332 F. 2d 759 (C.A. 5); *Voting in Mississippi*, *supra*, at 14; (2) using a double standard less favorable to blacks in determining whether black applicants had properly interpreted the constitutional sections assigned; *United States* v. *Lynd*, 349 F. 2d 790, 792 n. 3 (C.A. 5); and (3) assisting whites to register but not assisting blacks. *United States* v. *Lynd*, 301 F. 2d 818, 821 (C.A. 5), certiorari denied, 371 U.S. 893; *United States* v. *McClellan*, 248 F. Supp. 62, 66 (S.D. Miss.); *United States* v. *Duke*, 332 F. 2d 759 (C.A. 5); *Voting in Mississippi*, *supra*, at 14. Moreover, the discriminatory application of the "understanding test" was enhanced by the fact that blacks in the State of Mississippi up until very recent times were afforded an education far inferior to that afforded whites. *Voting in Mississippi*, *supra*, at 41-47; *United States* v. *State of Mississippi*, 229 F. Supp. 925, 990-994 (S.D. Miss.) (Brown, J., dissenting), reversed and remanded, 380 U.S. 128. See *Gaston County* v. *United States*, 395 U.S. 285, 296-297.

The poll tax instituted in Miss. Const. Art. 12, § 243 (1890), which was "primarily intended by the framers of the constitution as a clog upon the franchise," *Ratliff* v. *Beale*, *supra*, 74 Miss. at 268, 20 So. at 869, initially served as a disincentive to the exercise of the franchise by poor blacks. Later the poll tax was utilized as a means of disfranchising black voters because the requirement that the poll tax be paid for two consecutive years erected a procedural hurdle subject to discriminatory application by local officials. *Voting in Mississippi*, *supra*, at 19.

The "white primary," limiting participation in primaries to white voters, denied blacks access to membership in the State Democratic Party, the controlling party in the state. This denial was accomplished through an interplay of state laws, Miss. Laws, 1902, Ch. 66; Miss. Code Ann., § 3129 (Recompiled 1956), and party regulations which effectively prevented blacks from participating in Democratic Party Primaries.[10] No blacks were nominated for state offices in Democratic Party Primaries between 1900 and 1975 (R. Doc. 154, Hearing of May 7, 1975, Tr. at 46).[11]

The Voting Rights Act of 1965 prohibited many of the practices Mississippi historically utilized to disfranchise black voters. The white primary, the poll tax, and literacy tests are no longer means of voter discrimination, and blacks are able to vote and to participate in the electoral process in Mississippi to a more significant degree. However, apportionment has survived as a method of minimizing black voting strength in Mississippi. Brief Appendix A traces an unbroken chain of racially dilutive apportionment plans adopted by the state, from 1890 to 1975. See also pp. 59-62, *infra*.

---

[10] *Voting in Mississippi, supra,* at 3; *United States* v. *State of Mississippi,* 229 F. Supp. 952, 989 (S.D. Miss.) (Brown, J., dissenting).

[11] In August 1975, several black candidates were nominated for the legislature in Democratic Party Primaries (R. Doc. 209, Submission of the United States, filed January 26, 1976, Part II, Ex. A).

C. Procedural History Of This Litigation.

1. *Invalidation of the 1962 and 1967 Reapportionment Acts.*

In 1965 private plaintiffs filed this suit alleging that the 1962 apportionment of the legislature violated the Fourteenth and Fifteenth Amendments (I A. 37-46). In July 1966, the three-judge district court invalidated the 1962 apportionment on the ground that it violated the Fourteenth Amendment's one-person, one-vote requirement.[12] *Connor* v. *Johnson,* 256 F. Supp. 962. That same year, the legislature enacted a new plan, and on March 3, 1967, the court again held that plan unconstitutional on malapportionment grounds and reapportioned the Senate and House of Representatives for the 1967 elections. 265 F. Supp. 492.

Thirty-four of the 52 House districts and ten of the 36 Senate districts were multi-member under this court plan (*id.* at 495-497).

2. *The 1971 temporary plan ordered by the district court.*

In 1971, the state enacted another reapportionment plan. That plan was held unconstitutional on May 18, 1971, because the court found no rational basis for the population variances among the legislative districts. *Connor* v. *Johnson,* 330 F. Supp. 506. The

---

[12] Under the 1962 legislative plan a majority of the House of Representatives could be elected by 40.361 percent of the total population of the state; a majority of the Senate could be elected by 37.199 percent of the population. *Connor* v. *Johnson, supra,* 256 F. Supp. at 963.

district court then formulated a plan to govern the 1971 elections. *Ibid.*

Most of the House districts and almost half of the Senate districts were constituted as multi-member districts. *Id.* at 509-518.

The 1971 court-formulated plan was not final with respect to three counties: Hinds, Harrison, and Jackson. *Id.* at 519. Those counties accounted for one-fifth of the seats in both houses of the legislature. *Id.* at 509-518. Although the district court expressed reservations concerning multi-member districts in those counties, each of which would elect four or more senators or representatives, it concluded that there was not sufficient time before the 1971 elections to subdivide the counties into single-member districts. *Id.* at 519. The court stated that it expected to appoint a special master to determine whether such subdivision would be feasible for the 1975 and 1979 elections. *Ibid.*

On plaintiffs' motion, this Court stayed the district court's judgment until June 14, 1971. *Connor* v. *Johnson*, 402 U.S. 690. It directed the district court "absent insurmountable difficulties, to devise and put into effect a single-member district plan for Hinds County by that date." *Id.* at 692. The district court did not divide Hinds County into single-member districts, however, because it found that there were insurmountable difficulties. *Connor* v. *Johnson*, 330 F. Supp. 521.

After the 1971 elections, this Court considered on direct appeal plaintiffs' challenge to the 1971 court-

formulated reapportionment plan. *Connor* v. *Williams*, 404 U.S. 549. Noting with approval that the district court had retained jurisdiction over plans for Hinds, Harrison and Jackson Counties and had stated that a special master would be appointed in January 1972 to consider subdividing those counties into single-member districts, this Court directed that "[s]uch proceedings should go forward and be promptly concluded." *Id.* at 551. This Court declined to consider the prospective validity of the 1971 plan until proceedings were completed in the district court and a final judgment was entered respecting the entire state. *Id.* at 551-552. Without disturbing the 1971 elections, this Court vacated the district court's judgment and remanded the case for proceedings consistent with its opinion. *Id.* at 552.

The district court did not appoint a special master. *Connor* v. *Coleman*, 425 U.S. 675, 676.

3. *This Court's reversal of the district court's approval of the 1975 legislative plan.*

In April 1973 the Mississippi legislature adopted a new reapportionment plan. *Connor* v. *Waller*, 396 F. Supp. 1308, 1310. Plaintiffs filed timely objections to the 1973 plan and requested a hearing. *Ibid.* The hearing was held in February 1975. 396 F. Supp. at 1310. After the hearing, the legislature, in April 1975, adopted a reapportionment, *id.* at 1311, differing from the 1971 court-formulated plan only with respect to Harrison, Hinds, and Jackson Counties, *id.* at 1317. Despite the changes, these counties remained multi-member districts, *id.* at 1336, 1338.

a. *The 1975 legislative plan.*

The 1975 legislative plan contained 24 multi-member districts and 34 floterial districts and subdistricts (see pp. 60-61 n. 53, *infra*) (396 F. Supp. at 1333-1339) for the House and 14 multi-member districts for the Senate (396 F. Supp. at 1340). This plan adhered to county boundaries (*id.* at 1314-1316). Of the 82 counties in Mississippi, 17 have black voting age majorities.[13] In the House plan, nine of these counties were combined with white majority counties to form ten white majority districts and subdistricts and three black majority districts and subdistricts. Two of these three black majority districts were less than 51 percent black. Five of the 17 black majority counties were combined to form four black majority districts, and three black counties were constituted as single-member districts. In the Senate plan, 13 of the black majority counties were combined with white majority counties to form six white majority districts and two black majority districts, one of which was less than 51 percent black. Two black majority counties were combined to form one black majority district, and two black majority counties were constituted as districts (see Brief App. A at 19a-27a).

---

[13] Unless otherwise indicated, we have used voting age population (VAP) statistics, to measure dilution of black voting strength (see pp. 51-52, *infra*). Differences between our VAP figures and those of plaintiffs are attributable to their use of 1975 projections rather than 1970 census figures.

b. *Reversal of the district court's approval.*

The district court dismissed plaintiffs' complaint and directed the filing of an amended complaint addressing the 1975 legislation. 396 F. Supp. at 1311. Plaintiffs' promptly filed an amended complaint, and in May 1975 the district court entered judgment approving the 1975 legislative plan. *Connor* v. *Waller*, 396 F. Supp. 1308.

On June 5, 1975, this Court reversed that judgment. *Connor* v. *Waller*, 421 U.S. 656. It held that the 1975 legislative acts would not be effective as laws until they were cleared in accord with Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U.S.C. 1973c, and that the district court erred in deciding constitutional challenges to the acts based upon claims of racial discrimination. The reversal of the district court decision was, however (421 U.S. at 656-657):

> without prejudice to the authority of the District Court, if it should become appropriate, to entertain a proceeding to require the conduct of the 1975 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decisions in *Mahan* v. *Howell*, 410 U.S. 315 (1973); *Connor* v. *Williams*, 404 U.S. 549 (1972); and *Chapman* v. *Meier*, 420 U.S. 1 (1975).

On June 9, 1975, Mississippi submitted the 1975 acts to the Attorney General for his consideration

under Section 5. The Attorney General, on June 10, 1975, interposed an objection to the acts on the ground that Mississippi had failed to show that they did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race. *Connor* v. *Coleman, supra,* 425 U.S. at 677.

4. ***The 1975 temporary plan and the district court's intent to adopt a final plan.***

a. *Objections to reliance on the 1971 court-ordered temporary plan and the 1975 legislative enactment.*

The United States was permitted to intervene as party plaintiff on June 11, 1975 (II A. 128).[14] The district court then held a hearing on June 20, 1975, to determine under what plan the 1975 elections should be held (I A. 23). The original plaintiffs and the United States objected to the composition of certain legislative districts as drawn in the 1971 court plan and the 1975 legislative plan on the ground that those districts unconstitutionally diluted black voting strength (R. Doc. 175, Hearing of June 20, 1975, Tr. at 35, 66). The original plaintiffs also objected to the inclusion of multi-member districts in a court-fashioned plan and to malapportioned districts (*id.* at 67).

[14] The government's complaint in intervention invoked 42 U.S.C. 1971(a)(1) and (c), 1973, 1973c, 1973j(d), and 2000h-2 (II A. 129).

In an order dated June 25, 1975, the district court advised the parties that it intended to formulate a "temporary plan for the election of Senators and Representatives for 1975 elections ONLY," finding that there was insufficient time to formulate a final plan prior to the August 1975 primaries (II A. 178, 179). The court stated, however, that it intended without unnecessary delay to formulate a permanent plan for the election of legislators in the quadrennial elections of 1979. "When that shall have been accomplished, special elections may be ordered in those legislative districts where required by law, equity, or the Constitution of the United States" (II A. 180).

The court also requested that the parties amplify their objections to the existing plans before it implemented a temporary plan (II A. 179). After the parties did so, the court, by orders dated July 8, 1975, and July 11, 1975, formulated the temporary plan (II A. 183-206, 207-238). The court also ordered the parties to file alternative plans for the permanent reapportionment of the state legislature (II A. 237).

b. *The 1975 temporary plan.*

The temporary plan (II A. 207, 227-236) was similar to the 1971 court-ordered plan—vacated by this Court so that a final plan could be formulated—and to the 1975 legislative plan—objected to by the Attorney General under Section 5. Only eight districts were altered. The plan for the Senate contained 12 multi-member districts, electing 48.08 per-

cent of the Senate membership (25 of 52 Senators). For the House 21 of 84 districts were multi-member, electing 42.62 percent of the House membership (52 of the 122 representatives). Five of the Senate districts, electing 8 of 52 senators, had black voting age population majorities. In the House, 14 of the 84 districts, electing 22 of the 122 representatives, had black voting age majorities.

5. *Postponement of the district court's final plan.*

The original plaintiffs, on July 21, 1975, and the United States, on July 24, 1975, filed motions to alter or amend judgment, pursuant to Rule 59, Fed. R. Civ. P. (II A. 239-251, 252-253). Both motions requested that the district court establish a specific date by which a final plan would be established and a definite schedule for special elections (II A. 239, 252). Private plaintiffs asked the district court to order into effect a final plan by February 1, 1976, and to order such special elections as are necessary to cure defects in the temporary plans, such elections to coincide with the November 1976 presidential elections (II A. 239). As grounds for those motions, the plaintiffs detailed the legal deficiencies they found in the temporary plan (II A. 239-250).

By order of August 1, 1975, the district court ruled on plaintiffs' motions (II A. 245-255). While declining to establish a deadline for approval of a final plan, the court emphasized "its firm determination to have this matter out of the way before February 1, 1976," and its expectation that it would

"direct that [any required special elections] shall be held in conjunction with the 1976 Presidential election so as to save the expense of special elections, as far as possible" (*ibid.*).[15]

In October 1975, private plaintiffs and the United States submitted proposals for a final plan (I A. 28; III A. 1-77). On October 24, 1975, the district court ordered the United States to compile and submit to the court data respecting the November elections (R. Doc. 207). Upon filing those data, the United States moved, on January 26, 1976, to establish February 10, 1976, as the date for a hearing on the proposed final plan (III A. 78). The court, on January 29, 1976, denied the motion, deferring further hearing and decision until this Court ruled in three then-pending cases (III A. 79-80).[16]

6. *This Court's direction that the district court adopt a final plan.*

Thereafter, plaintiffs sought a writ of mandamus to vacate the district court's stay order of January 29, 1976, and to compel the district court to formu-

---

[15] In light of the proximity of the August 12 primary elections, the district court's indication that it intended to take prompt action on formulation of a final plan and scheduling of special elections, if necessary, and this Court's prior indication, in *Connor* v. *Williams, supra,* that it wished to rule only on a final plan, the United States did not appeal from the district court's order establishing a temporary plan.

[16] *United Jewish Organizations of Williamsburgh, Inc.* v. *Carey,* No. 75-104, certiorari granted, 423 U.S. 945, argued October 6, 1976; *Beer* v. *United States,* 425 U.S. 130; *East Carroll Parish School Board* v. *Marshall,* 424 U.S. 636.

late promptly a reapportionment plan and to order necessary special elections to coincide with the November 1976 presidential and congressional elections. Finding no justification for the district court's delaying further a final decision in this case, this Court instructed the district court to proceed to trial forthwith, to schedule a hearing within 30 days on all proposed final reapportionment plans, so that a final plan could be effective for the 1979 elections, and to order any necessary special elections to coincide with the November 1976 elections or "at the earliest practicable date thereafter." *Connor* v. *Coleman*, 425 U.S. 675, 679.

7. *The district court's final judgment.*

The district court held the required hearing on June 15, 1976 (R. Doc. 225). It devised a new plan for the Senate on August 24, 1976 (III A. 94-116), and for the House of Representatives on September 8, 1976 (III A. 117-138). The district court entered its final judgment (revising its August and September plans in some districts) on November 18, 1976 (III A. 232-248). The plans were further revised by an order amending final judgment entered on December 21, 1976 (III A. 279-282).

The 1976 plan is not effective until the legislative elections of 1979 which will elect members of the 1980 legislature. It establishes single-member districts for both the House and Senate. In the meantime the Mississippi legislature elected under temporary plans adopted in previous litigation, which provided for multi-member districts, continues to sit;

the current session began January 4, 1977. The district court, however, ordered special elections in only two of Mississippi's 122 House districts and none for any of the 52 Senate districts (III A. 247).

D. The District Court's Plan.

The decision of August 24, 1976, set forth the court's criteria for decision and its reapportionment of the Senate (III A. 94-116).[17]

1. *The district court's criteria for decision.*

The court concluded that it would prescribe a reapportionment based on single-member districts (III A. 98). As a result, because of demographic factors, it could not assign one House member to each county, as provided in Miss. Const. Art. 13, § 254, or adhere to the State's traditional practice of apportioning Senate seats within districts based on counties as a whole. The court endeavored, however, to conform its plan to state policy as closely as possible, by defining districts by counties or, where necessary counties plus "beats" (the five county-supervisor election districts in each county) and voting precincts from other counties (III A. 96-97). The court relied upon population figures from the 1970 census (III A. 101). In dealing with possible dilution of black voting strength, it also relied upon general population data, rather than data showing comparative black and white voting age population (*ibid.*).

---

[17] In formulating its plans, the court was assisted by reports from two special masters of October 7, 1976 (III A. 177-181) and December 8, 1976 (III A. 261-278).

Population variances were to be "as near *de minimis* as possible" in light of the problems encountered in trying to devise districts of equal population which also conform to county, beat and precinct lines (*ibid.*). The court stated that it would not depart from those guidelines except where necessary "to attain reasonable contiguity, a tolerable equality of population, or an acceptable degree of compactness" (*ibid.*).

With respect to dilution of black voting strength, the court stated (*id.* at 101):

> There shall be no minimization or cancellation of black voting strength. Any apparent dilution in any particular locality will occur only when dictated by the necessity for drawing district lines so as to adhere as closely as reasonably possible to the population norm while maintaining contiguity and a reasonable degree of compactness.

2. *The Senate and House plans.*

The district court's final judgment reapportions the state into 122 single-member House districts and 52 single-member Senate districts. Nine Senate districts have black voting age population majorities, of which four have black majorities of 54 percent or more. Twenty-four of the House districts have black voting age population majorities, seventeen of which exceed 54 percent.

Of the several alternative plans presented by the plaintiffs and the United States,[18] the district court briefly noted two of the plans submitted by plaintiffs (III A. 100). It gave no reason for rejecting the various alternatives offered for particular areas where the court's plan divided black population concentrations among majority white districts. The opinion does not explain the method by which the plan was devised, nor does the record show the statistical foundation for the plan or for any reports made to the court by the Special Master.

---

[18] Private plaintiffs presented a number of statewide plans for the House and Senate, including the Valinsky Plan (I A. 325-345, 346-359), Henderson plan (R. Docs. 140, 151; Exh. P-8 to May 7, 1975 Hearing, Deposition and Supporting Exhibits Nos. 2-7 of Dr. Gordon Henderson), Kirksey Plan (I A. 410-418, 419-435), County Boundary Plan (R. Doc. 205, Plaintiffs' Submission of Permanent Legislative Reapportionment Plans, at Ex. 1) and Minimum Fractionalization Plan (R. Doc. 211, Plaintiffs' Supplemental Submission filed Feb. 9, 1976). The United States also submitted three statewide plans for the House and Senate: State Modified Plan (II A. 135, 139-146, 165-167), Restricted Fractionalization Plan (III A. 1, 47-52, 55-71) and County Boundary Plan (III A. 1, 24-29, 33-41). In addition both private plaintiffs and the United States submitted alternatives to individual districts contained in the court plan (*e.g.*, III A. 160-168, 206-219). Private plaintiffs also submitted four additional plans for districting of Hinds County, Sweeney Plan (R. Doc. 151, Deposition of Harold E. Sweeney, Exh. P-6 at Ex. 2), Census Tract Senate Plan (R. Doc. 151, Exh. P-14), Mitchell Plan (R. Doc. 179, Plaintiffs' Supplemental Submission on Hinds County Single-Member Plans at Exs. A & B), Kirksey Plan (R. Doc. 244, Plaintiffs' letter of October 19, 1976 to Judge Coleman at Exh. C). Most of these plans are summarized in R. Doc. 179.

3. *Alternative plans offered by the plaintiffs.*

Plaintiffs and the United States submitted requests for modifications in the plan for the Senate announced in the judgment dated August 24, 1976, and in the plan for the House contained in the judgment dated September 8, 1976. Plaintiffs submitted a different plan for the Senate (the Modified Henderson Plan A) which would, they alleged, result in less population deviation and racial dilution than the court plan (III A. 182-183). For the House, plaintiffs requested alterations in 19 districts (III A. 191-196). The United States objected to 11 Senate districts [19] and 34 House districts [20] as unnecessarily diluting black voting strength (III A. 206-207, 208-212).

In a Motion to Alter and Amend Judgment and Plaintiffs' Objections to 1976 Court-ordered Legislative Reapportionment Plan, filed September 20, 1976, plaintiffs moved that the court "[o]rder a hearing on plaintiffs' objections to the court-ordered Senate and House plans" (III A. 160, 166). On September 23, 1976, Circuit Judge Coleman wrote a letter to counsel for plaintiffs asking that an "informal conference" between the counsel and the judges be held instead

[19] Senate districts to which the United States objected were: 2, 12, 14, 16, 17, 19, 22, 29, 37, 38 and 39 (III A. 207).

[20] House districts to which the United States objected were: 8, 15, 16, 32, 33, 34, 35, 36, 37, 38, 47, 53, 54, 55, 56, 60, 78, 79, 80, 86, 87, 88, 89, 92, 93, 94, 95, 100, 101, 102, 103, 104, 105, 106 (III A. 208-212). Objections to 22 of these districts (8, 15, 33, 38, 47, 53, 55, 56, 60, 78, 80, 86, 87, 88, 93, 95, 10[illegible], 101, 102, 104, 105, 106) were based not on dilution in the districts, but on the effect that changes in the 12 districts where dilution did exist would have on them.

of the hearing requested by plaintiffs' counsel (R. Doc. 237 at p. 2). An informal conference was held on October 7, 1976 (I A. 33; III A. 197), but no formal hearing on the parties' objections to the court's Senate and House plan was ever conducted.

4. *Modifications of the plan by the district court.*

On November 12, 1976, the court "amended" the plan for the House, changing 11 districts to "improve upon discrepancies involving contiguity and population" (III A. 221). This modification remedied the dilution in one House district to which the United States had objected.[21]

The court entered final judgment on November 18, 1976 (III A. 232-248), and plaintiffs, on November 29, 1976, moved to alter or amend judgment, and for a hearing on their objections to the plan (III A. 250-258). They asserted that the court had based its population statistics for the Senate and House plans "on the votes received by the Democratic candidates for Governor in the August 5, 1975 Democratic primary election," and that the plans were malapportioned and diluted black voting strength in certain respects (III A. 250-251). On December 17, 1976, Judge Coleman, through the clerk of the court, sent to counsel for the parties a report of the Special Master, dated December 8, 1976. That report (III A. 261-278) analyzes plaintiffs' (but not the United

[21] Dilution was remedied in House District 16, thereby eliminating any need to alter Districts 8 and 15 to which the United States had objected only because of their relationship to District 16.

States') objections to the final plan.[22] The report indicates that the election returns were used in the court's population estimates, but does not explain how (*id.* at 261-262).

On December 21, 1976, the court modified its final plan with respect to two Senate districts and nine House districts (III A. 279-282). These changes did not materially affect the dilution question in any district.

E. Requests For Special Elections.

Following announcement of the Senate plan the United States requested special elections in eight[23] (III A. 169, 172) and the original plaintiffs in thirteen[24] (III A. 139, 140) Senate districts. Following announcement of the House plan, the United States requested special elections in 27[25] (III A. 172, 212) and the plaintiffs in 41[26] House districts (III

[22] As to plaintiffs' request for a hearing, the report states "[t]his is for the Court to determine" (III A. 261).

[23] Initially the United States requested special elections in 14 Senate districts, but later amended that request to call for special elections in the following eight districts: 14, 15, 16, 17, 28, 29, 38, and 39 (III A. 169-172).

[24] The Senate districts for which plaintiffs requested special elections were: 12, 13, 14, 15, 16, 17, 28, 29, 38, 39, 41, 42, and 43 (III A. 139-140).

[25] The House districts in which the United States requested special elections are: 3, 8, 10, 15, 16, 17, 22, 24, 25, 26, 32, 33, 34, 37, 38, 47, 52, 56, 57, 79, 81, 82, 89, 97, 103, 105 and 115 (III A. 169, 173). Initially, the United States also sought a special election for districts 48 and 49, but it later withdrew that request (III A. 212).

[26] The House districts in which the plaintiffs sought special elections are: 3, 4, 6, 8, 10, 11, 15, 16, 17, 20, 22, 24, 25, 26,

A. 146-159). Defendants contended that no special elections were required for either chamber (Supp. A. 116a).

The district court ruled that "the only available thesis for ordering special elections in any of the newly formulated legislative districts would be where required to remedy any impermissible dilution of black voting strength in the temporary plan when compared with the permanent plan established for the 1979 elections" (III A. 224). The court declined to order any special elections for the Senate because every newly created senatorial district "with a black population majority was part of a black majority district in 1975" (III A. 226). For the House, the court ordered special elections in only two districts—79 and 97 (*id.* at 227-228). The court rejected special elections in other House districts requested by plaintiffs and the United States because (1) the areas comprising some new districts were in districts which had black population majorities under the temporary plan used for the 1975 elections; (2) special elections in some newly created black population majority districts could necessitate special elections in other districts because their representation would be affected; or (3) in the case of district 3, a white candidate received more votes than a black candidate in the 1975 general election in the precincts included within the new district (*ibid.*).

27, 30, 32, 33, 34, 37, 38, 44, 47, 52, 53, 54, 56, 74, 75, 79, 81, 83, 88, 89, 93, 95, 97, 98, 99, 113, and 115 (III A. 146).

The court declined to set "dates for special legislative elections until time for an appeal has expired or until the Supreme Court shall have decided an appeal on the merits" due to the possibility that this Court might later disapprove the reapportionment plan (III A. 230).

SUMMARY OF ARGUMENT

I

The district court's final plan is not a proper equitable remedy because it perpetuates the effects of past racial discrimination in Mississippi voting and reapportionment.

A. When a district court formulates a reapportionment plan, as a court of equity, it has a greater responsibility to ensure that its plan does not infringe voting rights than does a state legislature. *Chapman* v. *Meier*, 420 U.S. 1, 27. The Court has recognized, in cases involving legislatively adopted reapportionments, that multi-member districts may operate to minimize or cancel out the voting strength of racial or political elements in the voting population. *E.g.*, *Fortson* v. *Dorsey*, 379 U.S. 433, 439; *Whitcomb* v. *Chavis*, 409 U.S. 124, 143, 149-150; *White* v. *Regester*, 412 U.S. 755, 765-766. Because of this characteristic, court-ordered reapportionment plans may not utilize multi-member districts absent special circumstances. *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636, 639. The effectiveness of this criterion would be defeated, however, if single-member districts caused the very dilution the restriction on

multi-member districts is intended to avoid. Since improperly drawn single-member districts have the same potential as multi-member districts for submerging political or racial minorities, the same equitable standards should apply.

B. The past history of disfranchisement of blacks in Mississippi by devices designed to directly bar them from participating in the political process has been reinforced in Mississippi by apportionment plans designed to minimize or cancel the potential voting strength they have acquired as a result of recent efforts to give effect to the Fifteenth Amendment. The effects of the past discrimination have continued to the present day. It is intensified, in Mississippi, by the pattern of racial bloc voting which is a legacy of the discriminatory practices that pervaded public life in Mississippi. Blacks, and non-blacks sympathetic to black interests, presently have no prospect of being elected in white majority districts. Thus, although blacks as individuals may now stand for office or vote as electors without having to overcome the personal barriers erected in the past, they cannot collectively influence elections in white majority districts. While they have no right to have a black candidate elected, they have the right to an equal opportunity to elect a candidate who will represent their interests. Accordingly, to the extent that concentrations of black voters are unnecessarily submerged in white majority districts, in the context of historical discrimination and current patterns of racial bloc voting shown here, the pre-existing dilution of black voting strength is perpetuated.

C. In formulating its remedy, the district court should have avoided such unnecessary fragmentation of black voting concentrations. To do this, it should have first determined dilution on the basis of voting age population (VAP); this measure serves as a current indicator of the group's potential access to the political process. It then should have recognized that, in the circumstances here, the past history of discrimination operates as a disincentive to black voting participation, and consequently that, in preserving black voting concentrations, more than a bare black majority VAP is necessary to assure Mississippi blacks a meaningful opportunity to assert their voting potential. A practical measure for determining whether black voting potential has been diminished is the proportion of the number of seats with respect to which blacks would have a reasonable chance to be successful in an election, compared with their proportion of the voting age population. Cf. *Beer* v. *United States*, 425 U.S. 130, 137.

D. The district court, however, did little more than state, as a guideline, that black voting strength should not be minimized or cancelled; list the racial composition by population of the various Senate districts it created; and list some thirty black majority House districts it was establishing. Its findings do not indicate consideration of the dilution problem, racial bloc voting or the significance of voting age population. And because the district court's plan fails to avoid unnecessary fragmentation of black voting strength, it is an insufficient remedy

for the past discrimination shown here in apportionment of the legislature.

E. That unnecessary fragmentation occurred because of the district court's failure to recognize the dilutive effects of its own 1975 temporary plan. That plan was an adaptation of the 1975 legislative plan —whose implementation had been barred under Section 5 of the Voting Rights Act of 1965—and the 1971 court-ordered plan this Court had ordered vacated so that a permanent plan could be formulated.

A discriminatory pattern is discernible in the 1975 legislative plan. It contained a substantial number of multi-member districts in both the House and Senate. Although there were 17 counties with black majority VAP, only 10 House districts and five Senate districts had black VAP majorities (which were in some instances very slight). This was because black majority counties were combined with white majority VAP counties to form 21 House and Senate districts and subdistricts. Only five of those 21 districts and subdistricts had black VAP majorities, and three of those five were only slightly more than 50 percent black.

The 1975 temporary plan did not significantly differ. It continued to utilize multi-member districts, and treated 15 of the 17 black majority counties in the same way as the legislative plan.

The court's final plan eliminated unnecessary dilution in many districts by creation of single-member districts throughout the state. But it failed to remedy such dilution in six counties for which alterna-

tive plans, that met the requirements of contiguity, compactness and minimum population variance, were available.

In three of those counties—Hinds, Warren, and Forrest—blacks constitute a sizeable minority of the population and a substantial number are geographically concentrated in and around the major cities of Jackson, Vicksburg, and Hattiesburg. But the final plan drew district lines so as to divide and separate these concentrations, thus submerging them in white majority districts. In a fourth county—Washington—the lines were drawn to produce a black VAP majority so slight that the effects of past discrimination will continue to prevent effective assertion of black voting strength. In Claibourne County a black majority VAP has been submerged in a white majority. In Jefferson County the lines have been drawn to create a black majority VAP so slight as to be ineffective.

II

Because the final plan adopted by the district court is not to be implemented until the 1979 elections for the 1980 legislature, Mississippi will continue to be governed by the legislature elected under the 1975 court-ordered temporary plan. That plan diluted black voting strength unnecessarily, particularly through the use of multi-member districts, and failed to remedy the effects of past discrimination and racial bloc voting in Mississippi. If special elections are not held in districts in which the final plan remedies the deficiencies of the prior plan, the effects of

past disfranchisement of blacks will continue until the quadrennial election for the 1980 legislature.

The district court ordered special elections in only two House districts. It should have ordered elections in additional districts on the basis of two equitable considerations. First, special elections should be held in all districts that were changed from majority white to majority black districts. Second, considering the uncontradicted evidence of racial bloc voting, special elections should also be held where a significant increase in black VAP in a district, combined with the change from a multi-member to single-member district, will permit blacks to have a full and fair opportunity to vote for representation of their choice in the current legislature. Otherwise the exaggerated influence of white voters in those districts will continue in the legislature until 1980.

ARGUMENT

I. THE DISTRICT COURT'S FINAL PLAN IS NOT A PROPER EQUITABLE REMEDY BECAUSE IT PERPETUATES THE EFFECTS OF PAST RACIAL DISCRIMINATION IN MISSISSIPPI VOTING AND LEGISLATIVE APPORTIONMENT.

A. Court Ordered Reapportionment Plans May Not Unnecessarily Dilute Minority Voting Rights Or Cancel Minority Voting Strength.

The authority of the district court to formulate the reapportionment plan under review rests upon its remedial power, as a court of equity, to prescribe a reapportionment plan because the state legislature

has failed to adopt a plan which meets constitutional requirements. See *Chapman* v. *Meier*, 420 U.S. 1, 27. When a court is called upon to formulate a plan, it has a "greater responsibility," *id.* at 26, in exercising its equitable powers, to ensure that the resulting plan does not have the potential to infringe voting rights.

Reapportionment, of course, is primarily a legislative responsibility. *Reynolds* v. *Sims*, 377 U.S. 533, 586; *Chapman* v. *Meier*, *supra*, 420 U.S. at 27. In performing that function, a state has discretion to weigh the many political, social, planning, and practical objectives that go into formulating an apportionment plan, and strike an appropriate balance among the various competing considerations. See *Mahan* v. *Howell*, 410 U.S. 315, 324-325. However, a state statute regulating the franchise is also subject to exacting judicial scrutiny. "[A]ny alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." *Reynolds* v. *Sims*, *supra*, 377 U.S. at 562.

Judicial scrutiny of a legislative reapportionment is limited to determining whether it meets constitutional requirements.[27] In contrast, a reapportionment

[27] Of course, in those states and political subdivisions, like Mississippi, which are covered jurisdictions within the meaning of Section 4 of the Voting Rights Act of 1965, 42 U.S.C. 1973b, a legislative reapportionment plan is also subject to the procedural requirement and substantive standards of Section 5 of that Act. See *Georgia* v. *United States*, 411 U.S. 526. That Act bars covered jurisdictions from making changes in voting laws or procedures effective until the change has been precleared by the Attorney General or judicially declared to be without discriminatory purpose or effect. Such a declaration may be made only by a three-judge district court in the District of Columbia. *Connor* v. *Waller*, 421 U.S. 656; *Perkins* v. *Matthews*, 400 U.S. 379.

plan formulated by a district court is subject to more intense scrutiny. A "court-ordered plan * * * must be held to higher standards than a State's own plan." *Chapman* v. *Meier*, *supra*, 420 U.S. at 26.[28] This Court has applied that principle with respect to population inequality among districts and the use of multi-member districts in court-ordered plans.[29]

In the context of cases involving legislatively-adopted multi-member district plans, this Court has stated that voting rights are impaired when it is shown that an apportionment scheme "designedly or otherwise * * * under the circumstances of a particular case, would operate to minimize or cancel out

[28] See also, *Wallace* v. *House*, 425 U.S. 947, in which the Court vacated, for reconsideration in light of *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636, a court of appeals decision that required district courts, in prescribing their own plans, to accept the proposals of the defendant jurisdiction unless those proposals were unconstitutional. 515 F. 2d 619, 634 (C.A. 5). The court of appeals had reversed a district court decision rejecting a proposal by the jurisdiction for a redistricting plan under which one of five aldermen would have been elected at-large.

[29] Although a plan enacted by a state legislature which contains a population variance of as much as 9.9 percent is not *prima facie* unconstitutional (*Chapman* v. *Meier*, *supra*, 420 U.S. at 23), a court-ordered plan "must ordinarily achieve the goal of population equality with little more than *de minimis* variation" and "must avoid use of multimember districts * * *." *Id.* at 27.

the voting strength of racial or political elements of the voting population." *Fortson* v. *Dorsey*, 379 U.S. 433, 439; *Burns* v. *Richardson*, 384 U.S. 73, 88; *Whitcomb* v. *Chavis*, 403 U.S. 124, 143; see *White* v. *Regester*, 412 U.S. 755, 765. Such dilution is established when the complaining minority group proves that the legislative plan denied it equal access to the political process, that is, where "its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice." *White* v. *Regester*, *supra*, 412 U.S. at 766; see *Whitcomb* v. *Chavis*, *supra*, 403 U.S. at 149-150. In contrast, a district court abuses its discretion "in shaping remedial relief" by adopting a multi-member district plan absent "special circumstances" that dictate use of such a districting scheme. *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636, 639. See also *Chapman* v. *Meier*, *supra*, 420 U.S. at 26-27; *Mahan* v. *Howell*, 410 U.S. 315, 333; *Connor* v. *Johnson*, 402 U.S. 690, 692; *Connor* v. *Williams*, 404 U.S. 549, 551.[30] Moreover, this remedial standard is not dependent upon a showing that the multi-member districting at issue would be unconstitutional in itself or would discriminate against "any racial or political group * * *." *Chapman* v. *Meier*, *supra*, 420 U.S. at 19. "Absent particularly pressing features calling for multi-

[30] Cf. *City of Petersburg* v. *United States*, 354 F. Supp. 1021 (D. D.C.), affirmed, 410 U.S. 962; *City of Richmond* v. *United States*, 422 U.S. 358.

member districts," they are not to be used in court-ordered plans. *Ibid.*

A multi-member electoral scheme, such as that in *White* v. *Regester*, *supra*, may submerge minorities in districts controlled by whites, thereby denying those minorities an equal opportunity to participate in the electoral process. Under such a scheme, the minority voters may not be able to exert their fair influence in the electoral process.[31] While this problem has been alleviated in the context of court-ordered plans by this Court's decisions disfavoring the use of multi-member districts, those decisions would be of little effectiveness in protecting minority voting rights

[31] The most explicit description of dilutive voting practices is provided by *Graves* v. *Barnes*, 343 F. Supp. 704 (W.D. Tex.), affirmed by this Court in *White* v. *Regester*, *supra*. In *White*, the Court upheld the ruling of a three-judge district court that the multi-member districts for the Texas House of Representatives in Dallas and Bexar counties operated to dilute the voting strength of minorities in those counties. In Bexar County, where the district court found that Mexican-Americans share a common heritage of discrimination, *Graves* v. *Barnes*, *supra*, 343 F. Supp. at 727-729, causing them to register and vote in lower numbers than Anglo-Americans, *id.* at 733, bloc voting "[froze] [Mexican Americans] into permanent political minorities destined for constant defeat at the hands of controlling political majorities." *Id.* at 732. Since Mexican-Americans were "[deprived] * * * of a reasonable chance to be successful," *id.* at 734, their candidates were not elected to the legislature and their interests were not adequately represented. *Id.* at 732. This Court affirmed the district court's conclusion that the electoral scheme operated to minimize or cancel out the voting strength of the minority by denying them an opportunity to participate equally in the political processes and to elect legislators of their choice. *White* v. *Regester*, *supra*, 412 U.S. at 765-766.

if the single-member districts created in such plans did not permit the minority a fair opportunity to realize their potential influence.

Improperly drawn single-member districts have the same potential as multi-member districts for submerging a racial minority. Where there is a substantial black population which is geographically concentrated and, therefore, has the potential to have an influence on the choice of one or more legislators, a single-member districting plan which fragments that population among several white-dominated districts submerges the black voters to the same extent as would a multi-member plan. See *Taylor* v. *McKeithen*, 407 U.S. 191; *Howard* v. *Adams County Board of Supervisors*, 453 F. 2d 455 (C.A. 5), certiorari denied, 407 U.S. 925. For example, the black voters of Hinds County constituted a 34 percent voting age population minority in the multi-member district electing five senators at-large under the state's 1975 plan. Although the county has been divided into five single-member districts, blacks have been divided among all five districts and are in the minority of those of voting age in each. They thus are still unable to realize their fair potential to influence the outcome of elections.[32] The injury is the same whether it is accomplished by use of multi-member or single-member districts. Since a single-member districting scheme which, in the context of

[32] The Senate districts in Hinds County are discussed at length at pp. 75-82, *infra*.

demonstrated tendencies of racial bloc voting, fragments a substantial black population and submerges it in several white majority districts, has the same potential for diluting black voting strength as does the use of multi-member districts, the same equitable standards should apply.

B. The Effects Of The Past Discrimination Against Blacks In The Electoral Process Continues Today.

1. *Racial bloc voting in Mississippi.*

The legacy of Mississippi's historical exclusion of blacks from the electoral process includes rigid patterns of racial bloc voting, a 97 percent white lower house and an all-white upper house (in the legislature of a state where more than 30 percent of the voting age population is black), a lower black than white political participation rate, and a correspondingly more difficult road for black than for white politicians. Plaintiffs' expert witnesses[33] presented the

[33] The plaintiffs introduced the testimony of the following witnesses concerning the behavior of black and white voters in the Mississippi electoral process:

(1) Dr. James W. Loewen, a political sociologist, who has observed the racial sociology of Mississippi since 1963 and has published two books on the subject (I A. 118-121).

(2) Dr. Gordon G. Henderson, a political scientist, who testified as an expert in the areas of computer science, political science and legislative reapportionment (II A. 1-5). He has specialized in research concerning Mississippi politics since 1963, particularly with respect to patterns of black and white voting and the

district court with uncontroverted evidence that the results of Mississippi elections are governed by racial bloc voting—that is that whites in Mississippi vote for white candidates and blacks for black candidates or candidates who represent their interests (I A. 108-110, 130-131, 184, 226-227, 362). This phenomenon is rooted in the history of prejudice and discrimination against blacks in the State of Mississippi (I A. 108), and has been an observable constant in Mississippi elections since at least 1967 (I A. 131) when blacks first began to be able to participate in the electoral process, as a result of passage of the Voting Rights Act of 1965. Analyses of elections in Mississippi show that racial bloc voting has occurred in dimensions of extreme statistical significance in statewide elections (I A. 127-131, 180), as well as in local elections (I A. 184). Whites will not vote for a black candidate (I A. 108, 130-131, 190, 226, 362), and blacks will generally not vote for a white candidate

---

social and economic characteristics of bloc voting (I A. 158; II A. 2-5).

(3) Mr. Harold E. Sweeney, Jr., a political scientist, who has analyzed apportionment plans at the state and county levels in Mississippi (I A. 73-75).

(4) Mr. Henry J. Kirksey, a Mississippi politician, who has analyzed election results by precinct on a racial basis in Hinds County for elections at the state, county and municipal levels since 1971 (R. Doc. 151, Hearing of May 7, 1975, Deposition of Henry J. Kirksey (Exh. P-7) at Exh. 1).

(5) Mr. Rims Barber, a politically involved citizen, who has analyzed the racial characteristics of Mississippi elections since 1965 (I A. 222-226).

who has a black opponent (I A. 130, 180, 190, 197).[34] As a result, it is unlikely that under existing conditions there could develop a coalition between blacks and whites in support of a black candidate in state or local elections in Mississippi (I A. 131, 184). And, significantly, blacks do not presently have a realistic opportunity to be elected to office in majority white districts (I A. 110; II A. 90).

2. *The past as a disincentive to black political participation.*

The history of racial discrimination in the electoral process has acted as a powerful disincentive to black voter registration (II A. 100), and is reflected in the fact that black voter registration is significantly lower than white voter registration (I A. 227, 234-238). Although black registration has increased significantly since passage of the Voting Rights Act of 1965, it continues to lag behind that of whites in Mississippi. Only 62.2 percent of blacks of voting age in Mississippi were registered to vote in 1971-1972, as against 71.6 percent of whites.[35] Indeed, black registration has not yet attained the level of 1867 (Brief App. A at 1a n.1).

---

[34] Although blacks vote for white candidates more often than whites vote for black candidates (I A. 226, 227; I A. 71, 108), the failure of whites to support blacks tends to result in black political impotence in white majority districts (see pp. 45-51, *infra*).

[35] Hearings on S. 407, S. 903, S. 1297, S. 1409, and S. 1443 before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 94th Cong., 1st Sess. 658 (1975).

Many of those who are registered do not vote in elections because they do not believe they can influence the outcome (I A. 181, 238). Moreover, older blacks, aware of the harsher forms of electoral discrimination against blacks, are afraid to register, and are afraid to vote once registered. Approximately 10-15 percent of blacks who are registered have never voted (I A. 228, 234-238).

Thus, for a variety of reasons, rooted in past discrimination, blacks in Mississippi have been discouraged from participation in the political process. Moreover, the relative economic disadvantage suffered by many Mississippi blacks further limits that participation.[36]

---

[36] Black families are much poorer than white families in Mississippi (I A. 141, 386-387). 1970 Census figures show that 59.2 percent of black families and 15.9 percent of white families in Mississippi have incomes below the poverty level and that 45.7 percent of black families and 10.5 percent of white families in Mississippi earn less than 75 percent of the poverty level. United States Bureau of the Census, *Census of Population: 1970*, Vol. 1, *Characteristics of the Population*, Part 26, Mississippi, Table 58, pp. 26-168-169. This relative poverty manifests itself in a number of ways in the electoral process. It is generally much more difficult for black candidates to raise funds or to expend their own funds to campaign (I A. 386). Poverty also causes a lack of participation by black voters. Poor Mississippi blacks are educationally deprived and this contributes to their inability to realize the potential of the electoral process. Moreover, the fear of economic retribution acts as a disincentive to participation by poor blacks in the electoral process (I A. 234-239).

3. The effect of past discrimination on recent elections.

For the foregoing reasons, the ability of blacks to organize in support of candidates who will represent their interests is greatly curtailed. The electoral results confirm this observation. Although blacks constitute 36.8 percent of the state's total population and 31.4 percent of the state's voting age population, only one black was elected to the Mississippi legislature from Reconstruction until 1975, and he was elected to the House from a District which had a 59.4 percent black voting age population.[37] Three additional black candidates were elected in 1975 from heavily black House districts.[38] Black candidates ran in primaries in 10 House and Senate districts. Three black candidates lost elections in districts which had black voting

---

[37] In 1971 Representative Robert G. Clark was elected in House District 16 (Holmes and Humphreys Counties). Blacks ran in 18 House and Senate districts in the 1971 General Election (R. Doc. 151, List of Black Candidates for State Legislative Offices, 1971, Nov. 2, 1971 General Election, Hearing of May 7, 1975, Exh. P-5).

[38] The representatives, the House districts from which they were elected, and the percentages of black voting age population in the districts are:

District 31C	Douglas Anderson	89.6 percent
District 31D	Horace Buckley	80.7 percent
District 31F	Fred Banks	75.2 percent

All three districts are parts of Hinds County, which was divided into twelve single-member House districts in 1975. (R. Doc. 209, Submission of the United States Pursuant to October 24, 1975 Court Order, at Chart No. 2, p. 3).

age populations between 44 percent and 48 percent.[39] Despite the recent slight increase in legislative representation, Mississippi has the lowest ratio of percentage of black legislators to percentage of black voting age population of any southern state.[40]

---

[39] R. Doc. 209, Submission of the United States Pursuant to October 24, 1975 Court Order, Chart No. 6. Black candidates lost in Senate district 22A which had a 48 percent black voting age population and in House districts 30 and 31E which had black voting age populations of 44.3 percent and 44.1 percent, respectively. In addition, a black candidate ran and lost in House district 28 which is 61.1 percent black voting age population.

[40]

	Statewide [1] No. of Legislators	No. of [1] Black Legislators	% of Black Legislators	% of Black [2] Voting Age Population
Mississippi	174	4	2.3%	31.4%
Virginia	140	2	1.4%	16.6%
Arkansas	135	3	2.2%	15.4%
Florida	160	3	1.9%	12.5%
North Carolina	170	6	3.5%	19.4%
Louisiana	144	10	6.9%	26.6%
South Carolina	170	13	7.6%	26.3%
Georgia	236	22	9.3%	22.7%
Texas	181	9	5.0%	11.3%
Alabama	140	15	10.7%	23.0%
Tennessee	132	11	8.3%	13.9%

[1] Statistics based on 6 *National Roster of Black Elected Officials, Joint Center for Political Studies, Washington, D.C.* (August 1976).

[2] Population data based on 1970 Census.

Mississippi's lack of responsiveness to black voters is rooted in its history of official racial segregation, see *Adickes* v. *Kress & Co.*, 398 U.S. 144, 197-201 (Brennan, J., concurring in part and dissenting in part); *Stewart* v. *Waller*, 404 F. Supp. 206, 214 (N.D. Miss.); *United States* v. *City of Jackson, Mississippi*, 318 F. 2d 1, 5 (C.A. 5), which was "steelhard, inflexible

4. The dilutive impact of racial bloc voting on black voting rights.

Participation in the political process may be effectively thwarted in either of two ways: (1) by directly barring or discouraging participation in the choice of candidates or the election of officials through a closed nominating process or restrictions on registration or voting (see, *e.g.*, *Smith* v. *Allwright*, 321 U.S. 649; *Dunn* v. *Blumstein*, 405 U.S. 330; *Kramer* v. *Union Free School District No. 15*, 395 U.S. 621); or (2) by minimizing or nullifying participation through practices which dilute the effectiveness of that participation (see, *e.g.*, *Reynolds* v. *Sims*, 370 U.S.

[and] undeviating." The history of racially discriminatory voting legislation which extends even up until the 1975 legislative reapportionment (see Brief App. A) is but one example. A history of deliberate racial discrimination permeates all aspects of Mississippi life. The reluctance of the school boards of Mississippi to carry out this Court's mandate in *Brown* v. *Board of Education*, 349 U.S. 294 (*Brown II*), is well known to this Court. See *Alexander* v. *Board of Education*, 396 U.S. 19, vacating and remanding *United States* v. *Hinds County School Board*, 417 F. 2d 852 (C.A. 5), certiorari denied, 396 U.S. 1032. Today, more than twenty years after *Brown* v. *Board of Education*, 347 U.S. 483 (*Brown I*), the Mississippi Constitution still provides that "[s]eparate schools shall be maintained for children of the white and colored race," Miss. Const. Art. 8, § 207, and the state constitution still contains an antimiscegenation provision, Miss. Const. Art. 14, § 263, although these provisions are without legal effect. In recent years the Fifth Circuit has ruled that both the Mississippi Highway Patrol and the Mississippi Cooperative Extension Service were guilty of discriminatory employment practices. *Morrow* v. *Crisler*, 479 F. 2d 960, affirmed and remanded, 491 F. 2d 1053 (*en banc*), certiorari denied, 419 U.S. 895; *Wade* v. *Mississippi Cooperative Extension Service*, 528 F. 2d 508.

533; *White* v. *Regester*, 412 U.S. 755). The impact of use of the first method in Mississippi—shown by low registration and voting and poor political organization among blacks—has been reinforced by apportionment plans which exemplify the second method by minimizing the opportunities of Mississippi blacks to influence the choice of state legislators. As early as 1890, the state adopted a reapportionment plan intended to reduce the effectiveness of the black vote (see Brief App. A at 3a-13a).[41] The state adopted reapportionment plans in the 1960's and 1970's which combined black and white majority counties and employed multi-member districts, as did the 1890 plan, to submerge large concentrations of black population in white majority districts (see Brief App. A at 13a-28a). The district court adapted that multi-member scheme to its 1971 and 1975 temporary plans (see pp. 59-63, *infra*). As a result, we submit, no election in this century for the Mississippi legislature, down to the most recent, has been held under an apportionment plan free from the effects of discrimination against blacks.

This Court has repeatedly recognized the unique importance of free and equal political participation by all citizens in our system of government. "[A]ny unjustified discrimination in determining who may participate in political affairs or in the selection of

[41] Thus, the district court's observation that the "one person, one vote rule" *caused* dilution of black voting strength, *Connor* v. *Waller*, 396 F. Supp. 1308, 1321-1322, appears to miss the mark.

public officials undermines the legitimacy of representative government." *Kramer* v. *Union Free School District No. 15*, 395 U.S. 621, 626. See also, *Reynolds* v. *Sims*, 377 U.S. 533; *Dunn* v. *Blumstein*, 405 U.S. 330. Moreover, "since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights," *Reynolds* v. *Sims*, *supra*, 377 U.S. at 562, it is essential that all groups have access to the political process.

While no group is constitutionally guaranteed the right to be represented in the state legislature (*White* v. *Regester*, 412 U.S. 755, 769; *Whitcomb* v. *Chavis*, 403 U.S. 124, 156), neither may an electoral scheme deprive a racial minority of the opportunity to participate equally with the dominant group in the selection and election of candidates. As noted in *South* v. *Peters*, 339 U.S. 276, 279 (Douglas, J., dissenting):

> The right to vote includes the right to have the ballot counted. * * * It also includes the right to have the vote counted at full value without dilution or discount. * * * That federally protected right suffers substantial dilution * * * [where a] favored group has full voting strength [and] [t]he groups not in favor have their votes discounted.

And the Court has held that "[f]ull and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature." *Reynolds* v. *Sims*, 377 U.S. 533, 565.

See also, *Kramer* v. *Union Free School District No. 15*, 395 U.S. 621, 627 n. 7.

This right is even more critical where, as here, the political groups are formed along racial lines. The practice of racial bloc voting, together with the majority vote requirement for primaries and special elections, Miss. Code Ann. §§ 23-3-69, 23-5-203 (1972), tends to translate into political impotence for blacks in districts which have white voting age majorities. Whatever may be the rights of a political interest group to exert its influence, the Fourteenth and Fifteenth Amendments mandate special protection against an electoral scheme which deprives blacks of effective exercise of their political strength. See *Whitcomb* v. *Chavis*, 403 U.S. 124, 169. As one commentator has noted:[42]

> For a racial minority like the Negro, indeed, the right of suffrage is more than a symbol of its role in a democracy. In a system such as ours, political action is a principal instrument for the protection of individual and group rights. As a disenfranchised minority, the Negro would have little hope to exert political pressure to bring about an end to discriminatory practices.

Nor does the absence of a slating process [42a] in Mississippi mean, as the district court implies, that blacks

---

[42] Schwartz, *Statutory History of the United States: Civil Rights* 367 (1970).

[42a] The slating process involves choice of candidates by a party organization, rather than by a primary in which no candidate receives party support. Anyone, including blacks, may run in primary or general elections in Mississippi without party nomination.

have an equal opportunity to participate in the electoral process (III A. 225). The right to stand for office or to vote as an elector is individual and personal. Effective participation in the democratic process depends upon collective political support. See Note, *The Supreme Court 1970 Term*, 85 Harv. L. Rev. 3, 138-139 (1971). Candidates are elected when interest groups form coalitions to support them. In Mississippi, however, whites, who are a majority, will not form coalitions with blacks to elect black candidates or candidates identified with black interests (see pp. 39-41, *supra*). Accordingly, blacks are not able to participate equally in the process leading to nomination and election of candidates in white majority districts,[43] and their individual votes are thus diluted or cancelled. See *Beer* v. *United States*, 425 U.S. 130, 144 (White, J., dissenting).

Contrary to the district court's conclusion (III A. 225, 226), the fact that blacks—due in large part to the decisions of this and other federal courts and to federal legislation such as the Voting Rights Act of 1965—are able to register and vote in Mississippi is not conclusive of whether their voting rights are being infringed. Their vote is of little consequence if they have no realistic opportunity to elect a can-

---

[43] This case is thus unlike *Whitcomb* v. *Chavis*, *supra*, where this Court found that blacks in Marion County, Indiana, were able to participate equally with whites in the political processes leading to nomination and election, 403 U.S. at 149, and to gain representation in the state legislature. *Id.* at 150 n. 29. Moreover, there was no evidence in *Whitcomb* that voters were racially polarized, as they are here.

didate responsive to their interests. Since the right to vote "implies that the voter have some reasonably meaningful participation in the choice of candidates and of policies, * * * to give a black voter a choice of voting for one of the three white candidates who know nothing and care less about his or her interests is to render the vote nugatory and the right meaningless." *Wallace* v. *House*, 515 F. 2d 619, 629 (C.A. 5), vacated on other grounds, 425 U.S. 947.

Although blacks have no right to elect a black candidate, they have the right to an equal opportunity to elect a candidate who will represent their interests. Mississippi blacks, who suffer the effects of discrimination, are entitled to have a fair chance of electing legislators who appreciate and will be responsive to those interests. See Bonapfel, *Minority Challenges to At-Large Elections: The Dilution Problem*, 10 Ga. L. Rev. 353, 360 (1976). Where, as in Mississippi, race is an important factor in the political process, the majority, elected without the need for minority support, is not likely to protect minority interests. See *Graves* v. *Barnes*, 343 F. Supp. 704, 727, 732 (W.D. Tex.), affirmed *sub nom. White* v. *Regester*, 412 U.S. 755.

The results confirm this observation. Despite the size of the state's black population, only four blacks have been elected to the Mississippi legislature since Reconstruction—and only in districts with strong black majorities of voting age population (see p. 43, *supra*). It is not surprising that the legislature, elected from districts in which voting was along racial lines and in which blacks support is not needed,

has done little to enforce the constitutional mandate of racial equality, and has, indeed, participated in the thwarting of many of the rights of black citizens of Mississippi (see pp. 44-45 n.2, *supra;* Brief App. A). As this Court has noted, legislators represent those whose support they need to win election. *Dallas County* v. *Reese*, 421 U.S. 477, 481.

C. The Remedy For The Dilutive Effects Of Past Discrimination And Bloc Voting Is To Avoid Unnecessarily Submerging Black Voting Age Population Concentrations In White Majority Districts.

The district court appears to have concluded, without explanation, that black voting strength could not be diluted in a district where blacks have a majority of the population. 396 F. Supp. 1308, 1326-1330 (S.D. Miss.).[**]

The proper measure of dilution of voting strength is not population, but access to the political process. *Zimmer* v. *McKeithen*, 485 F. 2d 1297, 1303 (C.A. 5) (*en banc*), affirmed on other grounds *sub nom. East Carroll Parish School Board* v. *Marshall, supra; Graves* v. *Barnes, supra*, 343 F. Supp. at 733, affirmed, *White* v. *Regester, supra*, 412 U.S. at 769. Only those of voting age can have an effect on the

---

[**] Throughout this litigation, the district court has considered only general population statistics to the exclusion of voting age population data. Despite its statement that population is not controlling (II A. 210), it has continued to limit its consideration to those statistics (II A. 207-211; III A. 134-135, 221-223, 280-282).

political process. Thus, the starting point for determining voting strength is voting age population, *i.e.*, persons 18 years or older (hereinafter "VAP"). Since the black proportion of the VAP in Mississippi is less than that of the general population, some districts which have black population majorities are majority white under a voting age population standard.[45]

The inquiry does not end there, however. Voting strength must be assessed against Mississippi's historic exclusion of blacks from politics. As we have

[45] We believe the district court erred in relying upon population data without articulating the source and methodology for obtaining its estimates. It is not clear whether the district court apportioned population among precincts on the basis of the number of registered voters in each precinct (as the court indicated in its opinion of August 24, 1976, III A. 114), or on the basis of the number of votes received by the gubernatorial candidates in the August 1975 Democratic primary (as indicated in the Special Master's report of December 8, 1976, III A. 260, 261). In either case, we believe the method to be inherently biased. Under either approach, districts containing heavily black precincts are likely to be underrepresented, since blacks register and vote in proportionately lower numbers than whites. There is no basis in the record for concluding that the court's results would accurately reflect population distribution. See *Burns* v. *Richardson*, 384 U.S. 73, 94-95. Our analysis of the population of the court's districts, which is based upon 1970 Census data and is described in Brief Appendix B, *infra*, indicates that the court's method was not reliable. In addition, the court's method provides no ready means of retrieving the racial breakdown of its districts. While we acknowledge that any practical means of ascertaining population involves estimation, the use of Census data and articulation of methodology would have afforded a neutral and more readily verifiable set of population statistics.

shown (pp. 41-42, *supra*), that past discrimination discourages present participation by blacks. *Graves* v. *Barnes*, *supra*, 343 F. Supp. at 733; *Zimmer* v. *McKeithen*, *supra*, 485 F. 2d at 1305.

The Fifth Circuit, recognizing this reality, has held in a voting case arising out of Leflore County, Mississippi, that a redistricting plan in Mississippi which produces only slim black majorities of *registered voters* "[enhances] the possibility of continued black political impotence." *Moore* v. *Leflore County Board of Election Commissioners*, 502 F. 2d 621, 624. *A fortiori*, in the context of Mississippi politics, districts with only a slight black VAP majority do not afford blacks a realistic opportunity to make their voice heard in the election of legislators. The evidence indicates that in this case, taking account of low registration and voting among blacks, more than a bare majority of the VAP is necessary to enable Mississippi blacks to elect a candidate of their choice.[46]

[46] The testimony varies regarding precise racial compositions needed in a district for blacks to have an effective voice in an election. Mr. Rims Barber stated in his deposition that unless a district "has [a] 58% black voting age population, * * * it does not have an effective working electoral majority * * *" (I A. 240). Dr. Gordon Henderson testified that, depending upon the particular locality, a 54 to 65 percent black population majority would be needed for there to be "a probability of electing black candidates * * *" (II A. 55, 56). We believe that 54 percent black VAP is, in the circumstances prevailing in Mississippi, the approximate minimum racial composition needed for blacks to have a working majority in a district.

In all these circumstances, we submit, the district court, in adopting a court-ordered plan, was required as a matter of equity to take account of these past infringements and adopt a districting scheme which would not perpetuate their effects. See *White* v. *Regester*, *supra*, 412 U.S. at 765, 769, affirming *Graves* v. *Barnes*, 343 F. Supp. 704, 733-734 (W.D. Tex.). As this Court recognized in an earlier voting rights case (*Louisiana* v. *United States*, 380 U.S. 145), even a facially neutral practice, formulated without discriminatory intent,[47] can perpetuate prior racial discrimination (*id.* at 154-155). Where that occurs, such a practice must be eschewed in favor of one which will not have that discriminatory effect. For, in these circumstances, "the [district] court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future" (*id.* at 154).

Since racial discrimination is being remedied, the district court should have taken account of racial

[47] This Court's recent decisions in *East Carroll Parish School Board* v. *Marshall*, *supra*, and *Chapman* v. *Meier*, *supra*, show that the propriety of a court-ordered plan is to be judged by its effects, and not merely by the motivations of the court which draws it. Such a rule is preferable to one which would require plaintiffs to introduce evidence attempting to impugn the motives of a district court and which would require a reviewing court to speculate on the state of mind of the lower court. Thus, this case is distinguishable from *Wright* v. *Rockefeller*, 376 U.S. 52, which was a challenge to an allegedly purposeful gerrymander by the New York state legislature.

factors in the formulation of effective relief. As this Court has noted in another context, "just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy." *Board of Education* v. *Swann*, 402 U.S. 43, 46.[48] See also, *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 18; *United States* v. *Montgomery County Board of Education*, 395 U.S. 225.

In so contending we do not suggest that the district court was required to engage in the reverse of the blatant racial discrimination that Mississippi has used to the present day to create and preserve an exclusively white state government. The basic model for any reapportionment calls for contiguous, reasonably compact districts with minimal population variances which meet the one-person, one-vote standard. See, *e.g.*, *Reynolds* v. *Sims*, *supra*. But in drawing such a plan the district court necessarily was concerned also with race. This was unavoidable be-

[48] If the reapportionment plan at issue had been formulated by the Mississippi legislature, race-consciousness would have been necessary in order to achieve compliance with the substantive protections of Section 5 of the Voting Rights Act. See *City of Richmond* v. *United States*, 422 U.S. 358, 370-372. For Section 5 encompasses changes in voting practices and procedures that have the potential for "dilution of voting power". *E.g.*, *Perkins* v. *Matthews*, 400 U.S. 379, 390; *Allen* v. *State Board of Elections*, 393 U.S. 544, 569; *City of Petersburg* v. *United States*, 354 F. Supp. 1021, affirmed, 410 U.S. 962.

cause racial discrimination in voting is a principal element of the violation being remedied."

In this respect it is not "racial representation by ratio [which the Constitution demands] but racial equity in the political process." *Wallace* v. *House*, *supra*, 515 F. 2d at 638. See also *Whitcomb* v. *Chavis*, *supra*, 403 U.S. at 149. Where there has been a history of discrimination it becomes important to gauge a racial group's potential influence on the choice of legislators in order to determine whether that potential has been minimized. See *White* v. *Regester*, *supra*.

---

[49] Since racial distributions are generally known, the draftsman of a reapportionment plan is likely to and can readily ascertain the general racial compositions of the districts he draws. Cf. *Beer* v. *United States*, 425 U.S. 130, 144 (White, J., dissenting). The Special Master's report of December 8, 1976, contained the racial breakdown of several House districts (III A. 266-268, 275-276), and the district court's orders have included data on racial composition of counties and districts. (See, *e.g.*, III A. 115.) The Bureau of the Census publishes racial population data. (See, *e.g.*, Brief App. B, *infra*.) Both the original plaintiffs and the United States submitted to the district court information concerning the racial population of districts to which they objected. (See, *e.g.*, III A. 160-168; III A. 206-219.) Moreover, the Special Masters in this case have been involved in drawing reapportionment plans for several counties in which claims of racial dilution were made and evidence was introduced showing the geographic location of the black population and the racial breakdown of the districts created. For example, Mr. William Neal was previously asked by the district court to consider creating single-member districts in Hinds County (III A. 95). Mr. Hoyt T. Holland, Jr., as an official of Comprehensive Planners, Inc., has drawn supervisor district apportionment plans for Hinds, Warren and Forrest Counties, among others. (*Kirksey* App., *infra*, n. 64, p. 76 at 368, 472-476.)

A practical criterion for determining whether potential voting strength has been diminished is the proportion of the number of seats with respect to which blacks would have a "reasonable chance to be successful," *Graves* v. *Barnes*, *supra*, 343 F. Supp. at 734, compared with their proportion of the voting age population.

Applying this approach in *Beer* v. *United States*, 425 U.S. 130, 137 n. 8, the Court noted that blacks, who constituted 35 percent of the registered voters in New Orleans, had a "theoretical potential of electing 1.7 of the five councilmen." The Court concluded that under the redistricting plan in question "at least one and perhaps two Negro councilmen" could be elected, *ibid.*, and upheld the constitutionality of the plan. See also *id.* at 157 (Marshall, J., dissenting); *Kirksey* v. *Board of Supervisors of Hinds County*, 528 F. 2d 536, 543 (C.A. 5), reheard September 9, 1976.

In shaping a remedy, such a proportional comparison provides a helpful "starting point" (*Board of Education* v. *Swann*, *supra*, 402 U.S. at 46), by providing a ready measurement of dilution, as well as a means of assuring that majority voting rights are not infringed. A proportional measure protects each group. See, Note, *Compensatory Racial Reapportionment*, 25 Stan. L. Rev. 84, 87 (1972).[50]

---

[50] Such an approach is merely a temporary measure to remedy the effects of past discrimination. Once blacks are given an opportunity to elect candidates who will represent their interests, the importance of race as an issue in Missis-

Notwithstanding its duty to avoid perpetuation of the effect of past racial discrimination, the district court did little more than state that "[t]here shall be no minimization or cancellation of black voting strength" (III A. 101), list the racial composition by population of the various Senate districts it was creating (III A. 115) and list some thirty black population majority districts in its plan for the House (III A. 134-135). It did not make findings indicating the extent to which it had taken the dilution problem into account in drawing the districts which produced the racial groupings it listed; it did not address the evidence of racial bloc voting; and it did not consider the significance of voting age population as an index against which to test the dilution of potential black voting strength, even though it had been asked to do so [51] and had the necessary racial information available to it.

In sum, on the crucial issue of remedying racial discrimination, while the path by which the district court reached its decision cannot be fully discerned, the plan it adopted is inadequate because it fails to

---

sippi elections and as a consideration in electoral districting, should diminish. See, Note, *Compensatory Racial Reapportionment*, 25 Stan. L. Rev. 84, 89 (1972). Moreover, black participation should be encouraged by a reapportionment plan which assures blacks access to the political processes. See Bonapfel, *Minority Challenges to At-Large Elections: The Dilution Problem*, 10 Ga. L. Rev. 353, 389 (1976).

[51] Memorandum of the United States in Support of Motion for Amendment of Judgment, attached to Motion for Amendment of Judgment (II A. 252-253).

avoid unnecessary fragmentation of black voting strength. In the context of racial bloc voting and electoral discrimination shown here, the remedy formulated by the district court should have been designed to achieve full realization of the long-suppressed black voting strength, rather than lend itself unnecessarily to continued dilution of that voting strength through fragmentation of substantial concentrations of black voters in majority-white districts.

D. The District Court's Plan Unnecessarily Fragments Concentrations Of Black Voters And Submerges Them Into White Majority Districts.

In light of the foregoing principles, we submit that the district court failed properly to exercise its remedial authority as a court of equity in six counties; three involve Senate districts and three involve House districts. In each of these counties, alternatives were available which would have avoided unnecessary dilution of black voting strength under the district court's own announced criteria (see Statement, *supra*, pp. 21-22), and under this Court's decisions. The court's error can be seen by examining the dilutive effects of the 1975 court-ordered plan, and comparing the extent to which its final plan remedied dilution under the previous plans, with the situation in the six counties where the plan is deficient.

1. *The dilutive effects of the 1975 court-ordered temporary plan.*

The 1971 and 1975 legislative elections were conducted pursuant to temporary plans for each house

devised by the district court after the court concluded that lack of time, resources and necessary data precluded the formulation and implementation of a satisfactory final decennial plan (see Statement, *supra*, pp. 12, 17). These "temporary" plans fell short of remedying the existing infringement of black voting rights. Indeed, by the use of multi-member districts and by the configuration of some districts, those plans perpetuated the historic minimization of black voting strength which began with the 1890 Constitution.

a. *The 1975 legislative plan.* The 1975 court-ordered plan was an adaptation of the 1975 plan enacted by the Mississippi legislature (III A. 223). The district court stated, in discussing special elections, "that the temporary plan comported with all pertinent constitutional standards" (*ibid.*). The legislative plan [52] distributed the 122 House seats among 71 districts and subdistricts, of which 24 were multi-member districts and 34 were floterial districts and subdistricts.[53] It distributed the 52 Senate seats

[52] That plan was essentially the same as the 1971 court-ordered plan and the 1973 legislative plan. The only differences were that under the earlier plans all representatives elected from Hinds County (District 31) and Harrison County (District 45) were elected at-large, whereas under the 1975 plan floterial districts were created in those counties. In addition, there were certain differences regarding residency requirements among the plans.

[53] A floterial district is one comprised of two or more subdistricts and a floater district. One or more representatives are elected from each subdistrict and one or more are elected at-large from the whole district. For example, counties X and

among 33 districts, of which 14 were multi-member.[54] The districts consisted of whole counties, either singly or in combination. Although there were 17 counties with black voting age population majorities, only 10 of the 71 House districts and subdistricts, and five of the 33 Senate districts had black VAP majorities. Of the 15 black VAP majority districts and subdistricts in the 1975 legislative plan, eight had majorities of 54 percent or more.

In the House, nine black majority VAP counties were combined with white majority VAP counties to form ten white majority VAP districts and subdistricts and three black majority VAP districts and subdistricts. In the Senate 13 black majority VAP counties were combined with white majority VAP counties to form six white majority VAP districts and two black majority VAP districts. The remaining black majority VAP counties were constituted as single county districts or combined with other black majority VAP counties to form black majority VAP districts (see Brief App. A, at 19a-28a).

Y could be combined in a floterial district so that one representative would be elected from county X, two elected from County Y and two elected at-large from counties X and Y. Thus, each subdistrict of a floterial district may be considered multi-member. We have counted each subdistrict and floater district separately since each has a different constituency.

[54] A reapportionment plan is more likely to be dilutive "where the multi-member districts compose a large part of the legislature, where both bodies in a bicameral legislature utilize multi-member districts, or where the members' residences are concentrated in one part of the district." *Chapman* v. *Meier*, 420 U.S. 1, 17.

A discriminatory pattern is discernable in the manner in which counties were combined. Black majority VAP counties were combined with white majority VAP counties to form 21 House and Senate districts and subdistricts. Only five of those 21 districts and subdistricts had black VAP majorities, and three of those five were only slightly more than 50 percent black. Moreover, in two of the five it appears unlikely that a white majority district could have been formed from contiguous counties. 396 F. Supp. at 1333-1341.

b. *The 1975 court-ordered temporary plan under which the current legislature was elected.* The district court's 1975 temporary plan did not significantly differ from the legislative plan. It increased the number of House districts (including subdistricts) from 71 to 84 and the Senate districts (and subdistricts) from 33 to 39. The 122 House seats were distributed among 84 districts (and subdistricts) of which 21 were multi-member districts and 28 were floterial districts and subdistricts. The 52 Senate seats were distributed among 39 districts (and subdistricts), of which 12 were multi-member districts and three were floterial districts and subdistricts. Only eight of the House and Senate districts in the legislative plan were altered by creating single-member districts, floterial districts, and altering the composition of districts.[55] Of the 17 black majority counties 15 were

[55] In the Senate, district 22 (Hinds County) was changed from a multi-member district to five single-member districts and district 27 (Jones, Covington, Jefferson Davis, Lawrence,

treated as they had been under the legislative plan. As a result there were only 19 black majority VAP districts: 14 of the 84 House districts, electing 22 of the 122 representatives, and 5 of the 39 Senate districts, electing eight of 52 Senators. Since the district court failed to articulate "special circumstances" which would justify the use of multi-member districts in a court-ordered plan, the 1975 temporary plan was invalid under this Court's decisions (see pp. 36-37, *supra*), as the district court itself recognized in drawing its final plan (III A. 98-99).

At the time it formulated the 1975 temporary plan the district court recognized that an apportionment plan containing multi-member districts, which combined a black majority county with a white majority county to form a white majority district, had the potential to dilute black voting strength. The court found dilution in two existing multi-member districts

and Marion Counties) was changed from multi-member to a floterial district (one floater district and two subdistricts). In the House, district 3 (DeSoto and Marshall Counties) was changed from a multi-member district to a floterial district (one floater district and two subdistricts), district 28 (Madison and Rankin Counties) was changed from a floterial district (one floater district and two subdistricts) to three single-member districts, district 31 (Hinds County) was changed from a floterial district (one floater district and five subdistricts) to twelve single-member districts, districts 42, 43, and 46 (Greene, Perry, Pearl River, Stone, Jackson, and George Counties) were changed from multi-member and at-large districts to single-member districts and district 47 was added to make eight single-member districts.

(House Districts 3 and 28)[56] and created new districts in the temporary plan to attempt to avoid the dilution in those two districts (II A. 207, 218-219). The court also recognized the possibility of dilution in certain other districts, but declined to formulate new districts for the temporary plan due to its belief that there was a lack of time or of adequate data, or an inability to devise a satisfactory plan for the particular district, especially in light of its desire not to violate county boundaries.[57] The court

---

[56] Regarding district 3, the court stated, in part: "Since Marshall County is entitled to elect one Representative, is a black majority county, and is submerged with a much larger white majority county for the election of Representatives at large, it is obvious that its power to elect one Representative from a black majority county has been diluted" (II A. 219). Regarding district 28, the court stated, in part: "Obviously it may reasonably be argued that there is a potential for dilution in this combination [Madison and Rankin Counties]" (II A. 218).

[57] House District 14 (Bolivar County):

> The Department of Justice says that this County could be divided into three single-member districts in such a fashion as to improve the chances of electing a black representative, but for lack of adequate data conforming to precinct lines this cannot now be done. The Court expects to give the division of Bolivar County further study for the permanent plan (II A. 216).

House District 15 (Issaquena and Washington Counties):

> In the formulation of a permanent plan, with adequate data, this district should include some, if not all, single-member districts (II A. 221).

House District 17 (Carroll and Leflore Counties):

> The district has black voting age population of 50.1%. With appropriate data the district should be susceptible to division, reducing its three member status (II A. 216).

House District 24 (Kemper and Lauderdale Counties):

> Kemper County is 54.84% black and is combined in a four Representative district with Lauderdale, with one of the four being required to be a resident of Kemper. The size of this district must be reduced.
>
> The legislative district status of these two geographically isolated black counties [Kemper and Noxubee] was the subject of extended discussion in the informal court-counsel conference of July 7, 1975. * * * No presently viable plan was suggested.
>
> * * * We have concluded that there are no presently viable answers to this peculiar situation, so we leave it as it is, with top priority when we come to consider the permanent plan (II A. 222).

House Districts 23 (Lowndes County); 23a (Oktibbeha and Noxubee Counties); 23b (Lowndes, Noxubee and Oktibbeha Counties, Floater district):

> These [Noxubee and Kemper Counties] are the only two black majority counties in East Mississippi. On its South side Noxubee joins Kemper. On their East sides both counties join Alabama.
>
> * * * * *
>
> Noxubee County is now combined with Oktibbeha County for the election of a Senator and for the election of two Representatives. As to the election of a Representative this is not satisfactory because Oktibbeha County has 28,752 people, twice that of Noxubee. Noxubee is 65.77% black, Oktibbeha is 65.21% white (II A. 221-222).

House District 30 (Claiborne and Warren):

> [Claiborne County has a] [b]lack population majority 4,986. * * * Claiborne is combined with Warren County, which has 41% black population. * * *
>
> Claiborne might be joined with some identifiable portion

stated, however, that it would give top priority to eliminating the existing dilution in the formulation of a final plan (II A. 222). Its adoption of single-member districts in the final plan contributed to this objective, but the final plan nevertheless was inadequate in particular respects to be discussed.

2. The final plan's elimination of unnecessary dilution in many districts by creation of single-member districts throughout the state.

In formulating a final plan, the court utilized single-member districts to comply with this Court's prior decisions regarding court-ordered plans (see pp. 36-37, *supra*). All House and Senate districts are single-member. In a number of instances, these districts remedy the dilution of black voting strength existing in certain multi-member districts created under the court's temporary plan. Twenty-four of the House districts and nine of the Senate districts have black VAP majorities. Of those, 17 of the House districts and four Senate districts have black VAP majorities of 54 percent or more. In four instances the final plan creates single-member districts with black VAP majorities out of prior multi-member districts that had white VAP ma-

---

of Warren County for a single-member district. However, by order of a three-judge court in a reapportionment case, Warren County presently has no validly existing Supervisor Beats (II A. 216).

jorities.[58] * In two instances, the final plan creates black VAP majority districts out of a combination of multi-member districts in which at least one of the multi-member districts was white VAP majority.[59] In ten other instances (seven House and three Senate districts) the increase in the black VAP majority in a newly created single-member district over that previously existing in a multi-member district is such that the opportunity for blacks to exert their full and fair impact on elections is significantly enhanced.[60] Finally, two other districts created in the final plan are an improvement over the temporary plan, but in our view do not eliminate the dilution of black voting strength in Washington and Issaquena Counties[61] (see pp. 88-90, *infra*).

---

* Footnotes 58 through 61 are printed at pp. 68-73, *infra*.

Final Plan District	BVAP%	Temporary Plan District	Number of Representatives	BVAP%
House 52 (Noxubee County, Lowndes County: Precincts of Crawford and Artesia)	61.3	23 (Lowndes County)	2	27.9
		23A (Oktibbeha and Noxubee Counties)	2	35.8
		23B (Lowndes, Oktibbeha and Noxubee Counties)	1	31.6
House 79 (Lauderdale County: Meridian City Precincts 5, 6, 9, 13, 14, 15, 16, 17, 18 and Precinct of East Bonita)	50.0	24 (Kemper and Lauderdale Counties)	4	28.8
House 89 (Adams County: Beats 4, 5 and Precinct of Somerset)	50.8	33 (Adams County)	2	44.0
House 97 (Wilkinson County, Amite County: Beats 1, 2, 3)	54.2	34 (Amite, Franklin, Wilkinson Counties)	2	46.6

68

Final Plan District	BVAP%	Temporary Plan District	Number of Representatives	BVAP%
House 47 (Sharkey County, Humphreys County: Beat 5, Silver City Precinct in Beat 3, Yazoo County: Precincts of Carter, Lake City, Eden, Free Run, East Midway, West Midway & Harttown in whatever beats situated)	61.8	16 (Holmes and Humphreys Counties)	2	59.4
		29 (Sharkey and Yazoo Counties)	2	49.6
House 81 (Claiborne and Jefferson Counties)	70.4	30 (Claiborne and Warren Counties)	3	44.3
		32 (Copiah and Jefferson Counties)	2	50.1

69

Final Plan District	BVAP%	Temporary Plan District	Number of Senators/ Representatives	BVAP%
House 3 (Marshall County: Beats 1, 2, 3, 4)	62.0	3 (DeSoto County)	1	30.2
		3A (Marshall County)	1	55.9
		3B (DeSoto & Marshall Counties)	1	40.5
House 8 (Coahoma County: Precincts of Coahoma, Lula, Lyon and Jonestown; Tunica County: Beats 1, 2, 3, 4 and Armory Precinct)	67.2	11 (Coahoma County)	2	58.2
		11A (Tunica & Quitman Counties)	1	56.8
		11B (Coahoma, Tunica & Quitman Counties	1	57.6
House 16 (Coahoma County: Mattson Precinct in Beat 3, Clarksdale Precincts in Beats 4 and 5)	68.5	11 (Coahoma County)	2	58.2
		11A (Tunica & Quitman Counties)	1	56.8
		11B (Coahoma, Tunica & Quitman Counties)	1	57.6

70

[Continued]

Final Plan District	BVAP%	Temporary Plan District	Number of Senators/ Representatives	BVAP%
House 22 (Bolivar County: Beat 1 and Precincts of Pace, Longshot, Shaw, Skene & Stringtown; Sunflower County: Precinct of Bayer-Linn)	62.2	13 (Sunflower County)	2	54.8
		14 (Bolivar County)	3	52.9
House 24 (Bolivar County: Beat 3 and Precincts of North Cleveland and Merigold)	61.0	14 (Bolivar County)	3	52.9
House 25 (Sunflower County: Beats 1, 3 and Precinct of Moorhead)	56.8	13 (Sunflower County)	2	54.8
House 37 (Leflore County: Beats 4 and 5)	63.0	17 (Carroll & Leflore Counties)	3	50.1
Senate 15 (Sunflower County; Bolivar County: Precincts of Shelby & Duncan-Alligator)	57.2	11 (Bolivar & Sunflower Counties)	2	53.7

71

[Continued]

Final Plan District	BVAP%	Temporary Plan District	Number of Senators/ Representatives	BVAP%
Senate 16 (Washington County: Beats 1, 3, 4)	51.7	12 (Humphreys & Washington Counties)	2	50.5
Senate 28 (Madison County; Holmes County: Beats 2, 3; Yazoo County: Precincts of Benton, Deasonville, Fugates, Eden, Free Run, East Midway, West Midway, Harttown, Carter & Dover (in whatever Beats situated))	56.0	15 (Holmes, Issaquena, Madison, Sharkey and Yazoo Counties)	2	54.8

72

Final Plan District	BVAP%	Temporary Plan District	Number of Representatives	BVAP%
House 32 (Issaquena County; Washington County: Beat 1 and Precinct of Avon)	53.1	15 (Issaquena & Washington Counties)	4	49.4
House 33 (Washington County: Precincts of Ward Center, Community Center, Arcola & Hollandale)	50.9	15 (Issaquena & Washington Counties)	4	49.4

73

3. *The final plan's failure to remedy unnecessary dilution in six counties.*[62]

Notwithstanding the district court's recognition of the need to avoid unnecessary dilution of black voting rights, and its correction of such dilution in many districts, it failed to apply this principle in six counties: Hinds, Warren, Forrest, Washington, Claiborne and Jefferson. In three of those counties—Hinds, Warren, and Forrest—blacks constitute a sizeable minority of the population and a substantial number are geographically concentrated in and around major cities: Jackson, Vicksburg, and Hattiesburg, respectively. Despite these concentrations, the black population in each county has been fragmented among two or more districts in a manner which submerges that black population in white majority districts. Blacks do not have a voting age population majority in any district in these counties.

The same fragmentation is accomplished in Washington County to produce House districts with black VAP majorities so slight that blacks will continue to be denied an opportunity to exert their fair influence on elections in that county.

Claiborne and Jefferson are adjacent counties in southeastern Mississippi. Both have black VAP majorities. Although a number of proposed plans in the record would combine black concentrations to form a

[62] Maps and statistical charts comparing the districts in which these counties appear in the district court's final plan with alternative districts we propose are contained in Brief Appendix C, *infra*.

compact proposed Senate district, the district court chose to divide them placing each in a relatively less compact district, one with a white VAP majority and the other with a slight black VAP majority.

In all of the foregoing situations the district court's plan adopted districts which unnecessarily fragment concentrations of black voters. The court should have examined the proposed alternatives to determine the feasibility of any having less potential for adversely affecting voting rights. See, *e.g.*, *Dunn* v. *Blumstein*, 405 U.S. 330, 343; *Chapman* v. *Meier*, *supra*, 420 U.S. at 25-26. While the district court sought to justify any "apparent dilution" of black voting strength on the grounds that it was "dictated by the necessity for drawing district lines so as to adhere as closely as reasonably possible to the population norm while maintaining contiguity and a reasonable degree of compactness" (III A. 94, 101), its findings do not show why alternatives which met these criteria were rejected in favor of "apparent dilution".[63]

a. *Hinds County* (see Brief App. C-1 and C-2). Hinds County is the state's most populous county and site of the state's largest city, Jackson. It has a total population of 214,973, and a black population of

[63] The district court discussed only two of the eight statewide plans submitted to it by the plaintiffs (III A. 100). Those were discussed only in general terms and not with respect to individual districts.

The alternatives are contained in Appendix C to this brief. They were designed to comply with the court's directive that the plan conform to county, beat or precinct lines (III A. 94, 97).

84,064. Blacks constitute 39.1 percent of its total and 34 percent of its voting age population.[64] Sixty-nine percent of the black population of the county is geographically concentrated in 48 contiguous black population majority census enumeration districts in Jackson.[65] No black has ever been elected to the Senate from Hinds County or to any county office in this century.[66]

In drawing the five Senate districts there (Nos. 31-35), the court below utilized the boundaries of the county's supervisor districts ("beats") drawn by the Board of Supervisors, which are themselves currently being challenged on the ground that they dilute black voting strength.[67]

---

[64] Appendix in *Kirksey* v. *Board of Supervisors of Hinds County*, C.A. 5, No. 75-2212 [hereinafter cited as "*Kirksey* App."] at 533, 544. The record in the *Kirksey* litigation was incorporated into the record in this case (I A. 51). The appendix prepared for the appeal to the Fifth Circuit and most of the trial exhibits have been lodged with this Court as part of the record.

[65] *Id.* at 533.

[66] *Kirksey* App. at 547. In 1967, the Hinds County Election Commission disqualified and excluded from the ballot four black candidates for supervisor from the then-existing two black majority districts under a law which was subsequently held unenforceable for failure to comply with Section 5 preclearance and to which, when submitted, the Attorney General interposed an objection (*id.* at 547-548).

[67] The reapportionment was proposed by the Board of Supervisors and approved by the district court in April 1975. *Kirksey* v. *Board of Supervisors of Hinds County*, 402 F. Supp. 658 (S.D. Miss.). The district court's judgment was affirmed on appeal. 528 F.2d 536 (C.A. 5). The case was re-

In 1969, after the existing apportionment of beats was declared unconstitutional,[68] the Board of Supervisors adopted a reapportionment plan which created five white majority districts.[69] That plan was submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. He interposed an objection on July 14, 1971, on the ground that dilution of black voting strength would result from combining blacks with a larger number of whites in each district in irregularly shaped, non-compact districts.[70] That plan was subsequently declared to be malapportioned [71] and was replaced by the current apportionment plan, which is in many respects similar to the 1969 plan.[72]

---

heard on September 9, 1976. The *en banc* court has not yet ruled. The United States has participated as *amicus curiae* in all stages of the appeal.

[68] *Smith* v. *McGee*, Civ. A. No. 4483, decided ~~May 12, 1976~~ December 19, 1969 (S.D. Miss.).

[69] *Kirksey* App. at 543. Prior to 1968, two supervisor districts in Hinds County had substantial black population majorities of 76 percent and 68 percent (*id.* at 542). In the Third Congressional District, black candidate for the United States House of Representatives, Charles Evers, carried one of those districts and received a substantial number of votes in the other (*Kirksey* Exh. P-11).

[70] *Kirksey* App. at 7.

[71] The *Kirksey* suit, attacking the 1969 plan, was brought in July 1971. The district court declared the 1969 plan unconstitutional in December 1972 and ordered the Board to devise a new plan. *Kirksey* App. at 30-31.

[72] *Id.* at 535-537, 439, 442.

Prior to 1975, all five senators were elected at-large from Hinds County. While this Court's decisions in *Connor* v. *Johnson*, 402 U.S. 690, and *Connor* v. *Williams*, 404 U.S. 549, contemplated the single-member districting of Hinds County, the 1973 and 1975 legislative plans continued the past practices of multi-member districting, and single-member districts were not ordered by the district court until the 1975 temporary plan. That single-member plan, by adopting the "beats" drawn by the Board of Supervisors (II A. 228), perpetuated prior dilution of black voting strength.

The same districting has been adopted in the 1976 plan. Under the final plan, the black population of Jackson is divided into five parts by means of unusually shaped districts which extend from the far corners of the county and, through the use of long corridors, reach into Jackson (Brief App. C-1). While the bulk of the black population is divided between Districts 32 and 35 (supervisor districts 2 and 5), Districts 31, 33 and 34 snake through the city further dividing the contiguous majority black enumeration districts. The result is that each of the five districts has a white VAP majority.[73] That result was not

[73] *Kirksey* App. at 545. Although Districts 32 and 35 have slight black population majorities (Brief App. C-2) the undisputed testimony of two expert witnesses in *Kirksey* indicates that the voting age population of those districts is no higher than 48 percent and 48.6 percent, respectively (*ibid.*); *Kirksey* App. at 281, 391-392. The estimates of blacks among registered voters were 41.7 percent and 42.2 percent. *Id.* at 289-290.

unexpected. The areas with concentrations of black population within Jackson were well known to the board and those who prepared the county redistricting plan, one of whom (II A. 237) Mr. Hoyt T. Holland, Jr., is a special master in this litigation."[74]

The asserted rationale for the strange shape of the supervisor districts and the resulting fragmentation of the black population is the need to achieve equalization of road mileage, bridges, and land area among the districts, so as to equalize the primary responsibilities of the supervisors—maintenance of roads and

[74] In *Kirksey*, one of the plaintiffs' witnesses testified that, in view of the pattern of racial bloc voting (see *Kirksey* App. at 372, 378-379), the absence of a black VAP majority in any district rendered "highly unlikely" the election of a black candidate or a candidate identified with the interests of blacks in Hinds County. *Kirksey* App. at 322-326. Based upon a similar, but independent, analysis, a second expert stated his belief that the election of a black in Hinds County would be "impossible." *Id.* at 350-378, 393. There was no evidence to the contrary. Thus, there was no basis for the district court's conclusion that blacks have a "realistic opportunity" to elect candidates of their choice in two districts and significantly affect the elections in the other three districts. *Id.* at 560.

Although it is arguable that blacks may be better represented in some political situations when they comprise a substantial portion of the population in a number of districts, rather than a majority in any one district, the repeated failure of black-supported candidates to win elections in supervisor Districts 2 and 5, which have black voting age populations of approximately 47 percent-48 percent, and the general pattern of bloc voting and electoral discrimination shown here, demonstrate the inapplicability of that argument to Hinds County, as well as to Mississippi generally.

bridges.[75] Such equalization, however, was not a concern of the board until 1969, after the 1968 special election had demonstrated black voting strength.[76]

The initiative for equalization came not from the board, but from the planning firm which employed Mr. Holland.[77] The president of the Board of Supervisors testified that equalization is not necessary to efficient county government.[78] Although he would prefer a plan which combined rural and urban areas in each district, he did not believe that a plan which had two districts entirely within Jackson would disrupt county government.[79]

The pre-1969 plan, under which road mileage was not evenly distributed among the districts, neither created administrative problems nor disadvantaged any district financially.[80] Districts with greater road mileage were appropriated more funds.[81] After litigation challenging the 1969 plan was instituted the board began studying a plan for road and bridge

[75] *Kirksey* App. at 536-538. Supervisors perform a variety of other duties including levying taxes and providing for the health and welfare of county residents.

[76] Deposition of Supervisor J. L. McGee, *Kirksey* Exh. P-24 at 5, 17.

[77] *Id.* at 20-21.

[78] *Id.* at 21.

[79] *Id.* at 58, 59.

[80] *Id.* at 17-18.

[81] *Ibid.*

construction and maintenance throughout the county. These duties would have been performed under the collective supervision of all board members. The plan would have divided the county into four maintenance districts, apart from the supervisor districts, relieving board members of individual responsibility for maintenance in their respective districts.[82] In April 1974, the board apparently adopted the plan when it passed a resolution placing the county engineer in charge of the construction and maintenance of county roads and bridges.[83] On August 12, 1974—seven days before trial—the board rescinded that action, without explanation.[84]

Thus, we believe that the asserted policy of equalization was recently conceived and highly tenuous. Cf. *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, No. 75-616, decided January 11, 1977, slip op. 13-14. However, whatever may be said of that rationale as supporting the use of noncompact districts for election of supervisors, it is not a justification for the use of such districts for election of state senators, whose responsibilities are neither directly nor primarily related to road and bridge construction and maintenance.

Several plans for Hinds County were offered by the original plaintiffs and the United States which, consistent with the district court's guidelines, would

[82] *Id.* at 59-62.

[83] *Kirksey* Exh. P-45.

[84] *Kirksey* Exh. D-5.

have produced more compact, regularly shaped districts without unduly fragmenting the black population concentrations in Hinds County.[85] The alternative plan for the county which the United States submitted as part of its Restricted Fractionalization Plan (Brief App. C-1, C-2) is illustrative.[86] The court did not explain its preference for the plan under attack in *Kirksey*.

b. *Warren County* (see Brief App. C-3, C-4, and C-5). Warren County has a total population of 44,981 and a black population of 18,355. Blacks constitute 40.8 percent of the total population and 38.15 percent

[85] See n. 18, *supra*, p. 23.

[86] In reviewing for the preparation of this brief the alternative plan for Senate districts in Hinds County submitted by the United States in the district court, we have discovered that the plan resulted in districts with a total variance of 12.1 percent rather than 6.75 percent, as we believed at the time. Since we recognize that such a variance is unacceptable in a court-ordered reapportionment plan, we have endeavored to adjust the district boundaries to reduce population deviations. We believe an acceptable level of variance (3.5 percent) can be obtained by transferring three voting precincts: voting precinct 18 from district 30 to district 29, precinct 59 from district 32 to district 31, and precinct 6 from district 30 to district 28. With those minor alterations, the relevant statistics are:

Senate District	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
28	43,885	2,251	5.1	1,234	4.2	+2.9
29	42,838	27,716	64.7	15,191	59.7	+0.5
30	42,359	29,252	69.1	16,033	64.3	−0.6
31	43,352	7,056	16.3	3,867	13.6	+1.7
32	42,539	17,785	41.8	9,748	36.7	−0.2

of the voting age population. Under the 1975 legislative plan and the court's 1975 temporary plan, Warren County was part of a white VAP, multi-member district.[87] While the final plan creates single-member districts, it unnecessarily fragments black concentrations by forming districts (53, 54, 55) which are not compact at all and which are far less compact and contiguous than those suggested by the plaintiff (see Brief App. C-3, C-4). Under the court's plan House Districts 53 and 54 are totally within Warren County and encompass the City of Vicksburg. House District 55 is a large, sprawling district which spans the southeastern, eastern, and northern portions of Warren County, as well as part of Yazoo County to the northeast. Because of its strange shape, House District 55 cuts off two majority black census enumeration districts in the north of Warren County and one majority black census enumeration district in the east of Warren County from contiguous majority black enumeration districts in House District 54 (*ibid.*).

The majority of the blacks in Warren County live in Vicksburg in two nearly contiguous concentrations around the center of the City (Brief App. C-3, C-4). There are 16 black majority enumeration districts within the City (*ibid.*). The court's plan unnecessarily carves up these concentrations between House District

[87] Warren County was combined with Claiborne County in District 30 to elect three representatives. The VAP of District 30 was 44.3 percent black.

53 and House District 54.[88] House District 53 slices into the concentration of blacks within Vicksburg and then spreads outward, much like a mushroom. By forming House District 53 in this manner, the court's plan splits concentrations of majority black census enumeration districts, while creating a non-compact district which cuts diagonally through virtually the entire length and width of the City of Vicksburg (*ibid.*). House District 54 is similarly irregular. It runs the entire length of the City of Vicksburg, like a reverse question mark, partially surrounding House District 53. By so doing, it separates a large concentration of contiguous majority black census enumeration districts in the north of the *City* from those in the center, and groups them with majority white census enumeration districts in the south and east of the City (*ibid.*).

The end result of the oddly non-compact configuration of House Districts 53, 54 and 55 is that the strength of the black vote in Warren County is diluted. Although blacks constitute 40.8 percent of the total population and 38.15 percent of the voting age population of Warren County, and two-thirds of the black population of Warren County is compactly concentrated in the City of Vicksburg, none of the

[88] The Court's plan virtually evenly divides the 16 black majority enumeration districts (EDs) between District 53 and 54. District 54 has 4 such EDs and 2/3 or more of three other EDs within its borders. District 53 has 7 black majority EDs and 2/3 of one other such ED within its borders. The remaining black majority ED is approximately evenly divided between the two districts.

three House Districts has a black population or voting age population majority.[89]

The alternative plan for Warren County proposed by the plaintiffs is far more geographically compact than the court's plan, does not unnecessarily carve up contiguous concentrations of majority black census enumeration districts,[90] and is wholly consistent with the district court's guidelines (Brief App. C-3, C-4). The Special Master in his December 8, 1976 report (III A. 261-278) called plaintiffs' districting "absolute gerrymandering" (*id.* at 275), but did not explain why such a compact plan is a gerrymander while the oddly shaped districts adopted by the court are not—except to suggest that one would not expect to find a heavily majority black district in a county with "only 40.8% [black] population" (*ibid.*). We disagree. Given the high degree of concentration of black population, we would expect at least one out of three districts to be substantially black majority if the districts are drawn fairly.[91] The record does not

[89] The three districts are 39.4, 39.2 and 40.3 percent black VAP (Brief App. C-5).

[90] Plaintiffs' plan groups most of the black majority census enumeration districts in District 54. District 54 had 9 such EDs and 4/5 or more of three more black majority EDs within its boundaries. District 53 has one black majority ED and 4/5 of another within its boundaries. One ED is evenly divided between Districts 53 and 54, and another is evenly divided between Districts 54 and 55.

[91] Plaintiffs' plan has one district (54) with a black VAP majority of 56.6 percent (Brief App. C-5).

reflect to what extent the court relied on the Special Master's report.

c. *Forrest County* (see Brief App. C-6, C-7, C-8). Forrest County has a total population of 57,849, a black population of 14,151 (24.5 percent), and a black voting age population of 20.7 percent. The court's plan also unnecessarily fragments the black population in Forrest County. It continues the dilution of black voting strength that existed under the 1975 legislative plan and the district court's temporary plan in which Forrest County was a part of a white majority, multi-member district.[92]

The blacks in Forrest County are concentrated in four contiguous areas. Three such areas—encompassing eight majority black census enumeration districts—are in the City of Hattiesburg and one (composed of three majority black census enumeration districts) is immediately south of Hattiesburg (Brief App. C-6 and C-7). Although Forrest County has 20.7 percent black VAP, and one would ordinarily expect that one of four districts (districts 103, 104, 105 and 106) would be majority black, under the court's plan no district has more than 35.4 percent black VAP (Brief App. C-8).

The fragmenting of the black voting strength is achieved by dividing black concentrations between District 105 and District 103. District 105, which begins in the heavily white area 15 miles south of

[92] Under the prior plans Forrest County was combined with Lamar County in District 39, electing four representatives at-large. That district had a black VAP of 18.95 percent.

Hattiesburg, encompasses the group of blacks living south of Hattiesburg, on the western edge of the county, spreads east within the city, thus avoiding the concentration of blacks in the northern part of Hattiesburg, and continues to the majority white eastern edge of this county, which is cut off from the rest of the district by District 103 (Brief App. C-6, C-7). District 103 begins in heavily white west Hattiesburg, cuts diagonally across Hattiesburg dividing the black concentrations into two groups and encompasses a virtually all-white area east of the city in an elongated, oddly shaped district (*ibid.*).

The alternative plan proposed by the United States avoids this fractionalization of concentrations of blacks (Brief App. C-6, C-7). District 103 under the alternative plan is 61.1 percent black VAP (Brief App. C-8). It is a relatively compact district, encompassing the area south of Hattiesburg and the eastern part of the city, thus avoiding a division of the black concentrations (Brief App. C-6, C-7).[93] Neither the

[93] According to our calculations, the district court's plan for Forrest County and adjoining counties has a total variance of 18.2 percent (Brief App. C-8). Although the court's order of September 8, 1976, indicates that the total variance is 4.4 percent (Brief App. C-8), as noted above, the court has not disclosed the basis for its figures or the manner in which they were derived. The alternative plan submitted by the United States in the district court has a total variance of 15.6 percent, rather than 11.7 percent, as we believed at the time of its submission. Although this variance is lower than that of the court's plan we believe it can be reduced even further to 8.85 percent by transferring Camp precinct from

district court nor the special master explained their rejection of the alternative plan.

d. *Washington County* (see Brief App. C-9, C-10, C-11). Washington County has a total population of 70,581, of which 54.5 percent (38,460) is black, and a black VAP of 49.2 percent. Issaquena County has a total population of 2,737, of which 62 percent is black (1,698), and a black VAP of 54.9 percent. These counties constitute another area where the court's plan unnecessarily fragments the black population and thereby dilutes black voting strength. These counties were combined into a white VAP majority, multi-member House district under the 1975 legislative plan and the court's temporary plan.[94] The districts in these counties are somewhat different from those discussed above in that all of the four districts in the district court's final plan have substantial black populations, two of them having slight black VAP majorities. Our calculations provide black VAP figures for the four districts as follows: District 32—53.1 percent; District 33—50.9 percent; District

---

District 105 to District 103. With that minor change, the relevant statistics for Districts 103 and 105 are:

House District	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
103	18,578	11,247	60.5	6,379	55.4	+2.2
105	17,432	2,377	13.6	1,348	11.3	−4.1

[94] Under the prior plans, Washington and Issaquena Counties were confined to District 15, electing four representatives at-large. The VAP of District 15 was 49.4 percent black.

34—49.9 percent; and District 35—47.1 percent.[95] For the reasons explained above (see pp. 52-53, *supra*), even the slight majorities are not, given the history of discrimination against blacks, working majorities. That is, as a practical matter, blacks will not have an effective opportunity to prevail in an election in any of the four districts in these two counties, even though Washington County has a black VAP of 49.2 percent and Issaquena County is almost 55 percent black VAP.

This unexplained fragmentation of the blacks in these counties is achieved in two ways. First, all four districts run into the City of Greenville and divide the black population of that city into four parts (Brief App. C-9, C-10). Because the city is heavily populated in comparison with the rural area of Washington County, the division of the city's black population into four districts results in no substantially black majority district in Washington County.

---

[95] The district court characterized all four districts as majority black (III A. 135). This difference is, in part, attributable to the court's concentration on population, rather than voting age population, figures. It is mathematically impossible for all four districts in a majority white VAP area to have majority black VAPs. Since estimates have been used both by the court and the parties, it is impossible to determine with certainty the exact population of these districts. Our figures, however, indicate that two of the four districts have white and two have black VAP majorities. The court did not discuss voting age population and, therefore, its figures provide no basis for judging dilution of black voting strength. Moreover, even if all four districts had bare black majorities, we believe black voting strength would be diluted.

Second, Issaquena County, while almost 55 percent black VAP, must be combined with part of Washington County because it has insufficient population to constitute a district. In the court's plan, however, it is combined in District 32 with part of the white areas of Greenville and some of the few rural majority white enumeration districts to reduce the district's black VAP to 53.1 percent.

The alternative plan proposed by plaintiffs and supported by the United States avoids this fragmentation by dividing the black population of Greenville into only two parts (Brief App. C-9, C-10). Hence Districts 34 and 35 have black VAP populations of 61.6 percent and 57.9 percent, respectively. In addition Issaquena County is grouped in District 32 with the rural southern and eastern part of Washington County with a resulting black VAP of 59.9 percent. Accordingly, the alternative plan avoids the district court's fractionalization of the black voting strength in these two counties with heavily black concentrations.

e. *Jefferson and Claiborne Counties* (see Brief App. C-12 and C-13). Jefferson and Claiborne Counties are contiguous heavily black majority counties on the western border of Mississippi. Claiborne has a total population of 10,086 of which 7,522 (74.6 percent) is black and a black VAP of 71.3 percent. Jefferson has a total population of 9,295, of which 6,996 (75.3 percent) is black, and a black VAP of 69.3 percent. In the 1975 legislature and the court's 1975 temporary plan for the Senate, the two counties were

split into two multi-member white majority districts.[96] The court's final Senate plan, while converting the two districts to single-member districts, continues the dilution of black voting strength by combining the blacks of these counties with largely white areas of other counties.

Claiborne County is combined with Beat 3 of Copiah County and Lincoln County to make a white majority district (60.4 percent white VAP). Jefferson County is combined with Beats 1, 2, 4 and 5 of Copiah County to make a district with a slight black majority (52.1 percent black VAP) (Brief App. C-12). Seven of the eight plans proposed by the United States and plaintiffs avoid this fragmentation of blacks by combining Claiborne and Jefferson in one district.[97] The County Boundary Plan submitted by the United States is illustrative (Brief App. C-12). It combines the two counties with Copiah County to form a 55 percent black VAP district. This district

---

[96] Claiborne, Copiah, Lincoln and Simpson counties were combined in District 24, electing two senators. Jefferson was combined with Adams, Amite, Franklin, and Wilkinson Counties to elect two senators in District 25. The black voting age populations of Districts 24 and 25 were 37.1 percent and 47.9 percent, respectively.

[97] R. Doc. 151, Henderson Senate Plan, Exh. P-8, Hearing of May 7, 1975, at Ex. 2; Kirksey Senate Plan, I A. 32; R. Doc. 205, County Boundary Plan, Plaintiffs' Submission of Permanent Legislative Reapportionment Plans, at Ex. 2; Modified Henderson Senate County Boundary Plan, III A. 189; R. Doc. 173, State Modified Plan for Senate, Exh. J-1; Senate Restricted Fractionalization Plan, III A. 51; United States' Senate County Boundary Plan, III A. 28.

is more compact than the court's districts. The court gives no explanation for rejecting this district and in our view it was error for the court to fractionalize the black voting strength of Jefferson and Claiborne Counties in its Senate plan.[88]

For the foregoing reasons, we believe that the district court's final plan is defective in the districts discussed above.

II. WITH FORMULATION OF THE FINAL PLAN, SPECIAL ELECTIONS ARE REQUIRED IN CERTAIN DISTRICTS TO REMEDY, WITHOUT FURTHER DELAY, THE DILUTION EXISTING UNDER PRIOR PLANS.

The final plan ordered by the district court is not to be implemented until the 1979 elections for the 1980 legislature (III A. 232). Until the 1980 legislature is seated, the state will continue to be governed by the legislature elected under the 1975 court-ordered temporary plan.

We have shown (*supra*, pp. 66-73; 49-51) that the 1975 temporary plan operated to dilute black voting strength in Mississippi by barring black participation in "the political process in a reliable and meaningful manner." *White* v. *Regester*, *supra*, 412 U.S. at 767.

We have also recounted the State's long history of discrimination in voting (see Brief App. A). Although blacks have been free to register and vote in recent years with the assistance of federal ex-

[88] The two counties constitute House District 81, where the court has denied special elections. See pp. 26 n. 25, 27.

aminers, there remain present effects of that past discrimination. Current lower registration and voting by blacks is, as this Court recognized in *White* v. *Regester*, *supra*, 412 U.S. at 768, evidence of those effects. Moreover, as in the Texas county involved in *White* v. *Regester*, the legacy of discrimination is presently felt in the racial polarization exhibited by racial bloc voting in Mississippi.

Thus, if special elections are not held in districts where a long-delayed proper remedy for discriminatory districting is now at hand, vindication of the fundamental personal rights involved in reapportionment, see *Reynolds* v. *Sims*, *supra*, and eradication of the effects of the state's prior policy of disfranchisement of blacks will once again be frustrated until the quadrennial election for the 1980 legislature.

When the district court previously postponed devising the final plan and ordering necessary special elections, this Court in *Connor* v. *Coleman*, *supra*, 425 U.S. at 679, ruled that "the District Court should in the circumstances promptly carry out the assurance given in its order of January 29, 1976, to 'bring this case to trial forthwith * * *' and schedule a hearing to be held within 30 days on all proposed permanent reapportionment plans to the end of entering a final judgment embodying a permanent plan reapportioning the Mississippi Legislature in accordance with law to be applicable to the election of legislators in the 1979 quadrennial elections, and also ordering any necessary special elections to be held to coincide with the November 1976

Presidential and congressional elections, or in any event at the earliest practicable date thereafter."

The district court did not formulate the final plan in time to hold special elections to coincide with the Presidential elections. Instead, relying on its view that the 1975 temporary plan met all constitutional standards, it ruled "that the only available thesis for ordering special elections in any of the newly formulated legislative districts would be where required to remedy any impermissible dilution of black voting strength in the temporary plan when compared with the permanent plan established for the 1979 elections" (III A. 224). It concluded that in the Senate no elections were necessary because "[e]very such district with a black population majority was part of a black majority district in 1975" (III A. 226). In the House it ordered special elections in two districts —79 (ten precincts in Lauderdale County) and 97 (Wilkinson County and three beats in Amite County) —that were carved out of white population majority, multi-member districts (III A. 227, 228).

The district court's reasons for refusing the requests of plaintiffs and the United States to order special elections in other districts were inadequate. It should have been guided by two equitable considerations. First, special elections should be held in all districts that were changed from majority white to majority black districts. Second, considering the uncontradicted evidence of racial bloc voting, special elections should also be held where a significant increase in black voting age population in a district,

and the change from a multi-member to single member district, will permit blacks to have a full and fair opportunity to vote for representation in the current legislature. Otherwise, the exaggerated influence of white voters in those districts will continue in the legislature until 1980.

A. The District Court's Criteria For Refusing To Order Special Elections Were Erroneous.

The reasons given by the court for rejecting the requests of plaintiffs and the United States for additional special elections to remedy dilution existing under the temporary plan were: (1) new districts with black population majorities were part of black population majority districts under the temporary plan (III A. 228); (2) special elections to remedy dilution in certain districts would necessitate special elections in other districts because their representation would be affected (III A. 227); and (3) in the case of House District 3, a white candidate received more votes than a black candidate in the 1975 general election in the precincts included in the new district (III A. 228). These considerations are inadequate grounds for denying the equitable remedy of special elections.

Arguably, special elections should have been ordered in all of the newly created single-member districts throughout the state so that each district will be represented immediately by someone elected pursuant to a constitutional apportionment plan. Practical considerations, however, call for a balancing of this ideal against disruption of the state's regular election

schedule and legislative business. These practical considerations, however, do not, in the circumstances of this case, with more than two years still pending before the next regularly scheduled election, warrant the failure to order special elections in those districts where it can fairly be said that voters have suffered significant, tangible injury to their voting rights. See *Town of Sorrento* v. *Reine*, 425 U.S. 946; *Hadnott* v. *Amos*, 394 U.S. 358; see also *Tombs* v. *Fortson*, 241 F. Supp. 65, 71-72 (N.D. Ga.), affirmed, 384 U.S. 210; *Drum* v. *Seawell*, 249 F. Supp. 877, 881-882 (M.D. N.C.), affirmed, 383 U.S. 831; *Mann* v. *Davis*, 238 F. Supp. 458, 460 (E.D. Va.), affirmed *sub nom. Hughes* v. *WMCA*, 374 U.S. 694.[99]

In weighing these considerations it must be noted that the state has repeatedly failed to offer an acceptable plan which would have made a court-ordered plan, and special elections, unnecessary. While special elections will no doubt cause minor disruptions of normal state legislative processes, there has been no showing that they will cause any substantial injury that would outweigh the need for prompt vindication of the voting rights of the black citizens of Mississippi that have long been abridged.

The importance of holding prompt elections under a single-member district plan that affords blacks an

[99] See also, *Keller* v. *Gilliam*, 454 F. 2d 55 (C.A. 5); *Toney* v. *White*, 488 F. 2d 310 (C.A. 5) (*en banc*); *Hall* v. *Issaquena County*, 453 F. 2d 404 (C.A. 5); *Hamer* v. *Campbell*, 358 F. 2d 215 (C.A. 5), certiorari denied, 385 U.S. 851.

equal opportunity in the electoral process is illustrated by experience with the implementation of single-member districts for the House seats from Hinds County in the 1975 temporary plan. Although only one black member had previously been elected to the Mississippi House of Representatives since Reconstruction, in the 1975 election, three blacks were elected to the House from newly created black majority single-member districts in Hinds County. On the other hand, the statewide experience of blacks under the temporary plan reflects the deficiencies of that plan, for these were the only four blacks elected to the 122-member House. The final plan remedies many of the deficiencies; but special elections are needed to carry out the promise that the final plan holds.

B. Special Elections Should Be Ordered In Districts Changed To Black Voting Age Majorities, And In Districts In Which The Change From Multi-member To Single-member Representation Was Accompanied By A Significant Increase In Black Voting Strength.

1. *Changes from white to black voting age majorities.*

The district court erred in using total population rather than voting age population statistics in determining which districts were changed from white majority to black majority. As we have shown (pp. 51-52, *supra*), voting age population statistics are the proper measure in a racial dilution case because it is the cancellation or minimization of a racial group's voting strength that is being measured. Accordingly, the district court's criterion that special elections

should be held where single-member, black population majority districts were carved out of multi-member white population majority districts (III A. 227, 228) should be modified to use voting age population rather than total population in computing the racial compositions of the districts. Under this modified criterion, special elections should be held in House Districts 47, 52, 81, and 89,[100] in addition to those the district court ordered in House districts 79 and 97.[101]

The difference in the way Noxubee County is treated in the temporary plan and the way it is treated in district 52 of the final plan is illustrative of the need for special elections under this criterion. At the time of the formulation of the temporary plan, the district court recognized that Noxubee County and Kemper County, which adjoins Noxubee on the South, were "the only two black majority counties in East Mississippi" (II A. 221). Noxubee,

---

[100] The statistics regarding these districts are found at pp. 68-69, nn. 58, 59, *supra*.

[101] Statistics for districts 79 and 97 are found at p. 68, n. 58, *supra*.

This criterion would also require special elections in House districts 32 and 33, but as stated above (pp. 88-89, *supra*) those districts in the court's final plan are not adequate to eliminate the dilution of black voting strength in Washington County. Accordingly, we are asking that new districts be fashioned rather than that special elections be held under the final plan.

however, was submerged into a district with Oktibbeha County—majority white and twice the size of Noxubee—for the election of two representatives. The district had a black voting age population of 35.8 percent. The court acknowledged that this district "is not satisfactory" (*id.* at 222). Noxubee was also combined with Lowndes and Oktibbeha Counties to elect another representative in a floterial district, having a black voting age population of 27.9 percent. The court stated that Noxubee, along with Kemper, was in a "peculiar situation" to which "there are not presently viable answers * * *" (*ibid.*). The court said, however, that it would give the situation "top priority when we come to consider the permanent plan" (*ibid.*).

In the final plan Noxubee County is combined with two precincts of Lowndes County to constitute House district 52, which has a black voting age population of 61.3 percent. Thus, the final plan remedies the dilutive situation that the court recognized as existing for Noxubee County under the temporary plan. The reasons given by the district court for refusing to order special elections for district 52 were (III A. 226-227):

> The 9,397 black citizens of Noxubee County, in a county with not enough population of its own to elect one Representative, took part in the election of three Representatives, two of them coming from a district which was 55% white and 45% black. A special election in new District 52 would necessitate special elections in new

> Districts 43, 44, 45, and 46 [which contain the remainder of districts 23, 23A and 23B under the temporary plan], of which Noxubee County is not a part.

These reasons are inadequate (p. 103, *infra*) and at odds with the court's statements when formulating the temporary plan that relief from the dilutive situation in Noxubee County was needed (see p. 65 n. 57, *supra*).

The district court gives similar reasons for rejecting special elections in district 81 (Claiborne and Jefferson Counties) (*id.* at 227-228) in which the black voting age population is 70.4 percent. This district was carved out of two multi-member districts having black voting age populations of 44.3 percent and 50.1 percent. As with district 52, the black citizens of district 81 should have an opportunity at a special election to cast their votes without the dilutive effect existing under the prior plans.

The district court did not discuss districts 47 or 89, but special elections in those districts would similarly help remedy the effects of dilution under prior plans.[102]

---

[102] District 89 (part of Adams County) has only a 50.8 percent black voting age population compared with 44 percent under the temporary plan. In our view, this change is too small to warrant a special election, if no other special election were held. If, however, as we suggest, special elections are to be held in other districts, a special election here would not cause undue disruption and would be justified.

2. Significant increases in black voting age population.

Considering the uncontradicted evidence of racial bloc voting, special elections should also be held in other districts in which a significant increase in the black voting age population and a change from multi-member to single-member districts will permit blacks to exert their full and fair impact on the election. In these districts blacks had a slight voting age majority in a multi-member district under the temporary plan. While the need for special elections in these districts may be said to be somewhat less than in those districts in which there was a change from a white voting age majority to a black voting age majority, the history of discrimination in Mississippi made the prior slight black majority in these districts ineffective (see pp. 52-53, *supra*).

For example, House district 37 has a black voting age population of 63.0 percent under the final plan. It was carved out of a multi-member district, electing three representatives, with a black voting age population of 50.1 percent. The lower registration, lower turn-out, and difficulty of political organization for blacks in Mississippi, all of which result at least in part from past discrimination (see pp. 41-42, *supra*) make the district under the temporary plan an effective white majority district. Accordingly, a special election in the new district will play the same role as special elections in the districts discussed above. Under this principle, special elections should be also held in House districts 3, 8, 16, 22, 24, 25,

and in Senate districts 15, 16, and 28.[103] Because the increase in black voting age population is small in House district 25 and Senate districts 15, 16 and 28, we would not seek special elections in those districts if such elections were not required in other districts.[104] However, in circumstances where other special elections are being held the added disruption would be slight, and the division between blacks and whites in those districts is so close that the slight increase in black voting strength might affect the outcome of the election.

3. *Other considerations.*

Special elections might also be ordered in several other districts which, although not warranting special elections under the above criteria were previously combined with districts in the temporary plan that do warrant special elections. The district court used the interrelationship between such districts and the districts otherwise requiring special elections as a reason for declining to order special elections in certain districts.

---

[103] The statistics for these districts are found at pp. 71-72 n. 60, *supra*. The district court rejected special elections for district 3 (Marshall County) because a black candidate running county-wide as an independent in the general election failed to carry a majority in the area which comprises new district 3 (III A. 228). New district 3 has a more than six percent greater black majority than did the county. Voters in this new undiluted district should have an opportunity to elect the representative of their choice.

[104] Statistics for these districts are found at pp. 71-72 n. 60, *supra*.

This interrelationship is not a sufficient reason to refuse to order special elections where they are needed. The holding of additional special elections in the related districts would not harm anyone's rights. They would permit additional voters to be represented by persons selected pursuant to a lawful plan.

The district court may also have to consider whether special elections are required where two incumbents are residing in the same new district, and a special election is held in a different new district but one which was formerly represented by the two incumbents. In such a situation, the number of representatives in the legislature would exceed 122 unless a special election is held in the new district in which the two incumbents live (III A. 227-229).

In our view, the district court on remand should decide, in light of these considerations and of various local circumstances, where such additional special elections are required.

CONCLUSION

The judgment of the district court should be affirmed in part, reversed in part, and vacated in part. The cause should be remanded to the district court for implementation of the districting plans specified in this brief for Hinds, Jefferson and Claiborne Counties in the Senate and Warren, Forrest, Washington and Issaquena Counties in the House, or of other districting for those counties that does not dilute black voting strength. The district court should also be instructed to order special elections, to occur

this year, in the new districts drawn in those counties to avoid dilution, in House Districts 3, 8, 16, 22, 24, 25, 47, 52, 79, 81, 89 and 97 and in Senate Districts 15, 16 and 28, as well as in such additional districts as are required because of their relationship to the foregoing districts.

Respectfully submitted.

DANIEL M. FRIEDMAN,
Acting Solicitor General.

J. STANLEY POTTINGER,
Assistant Attorney General.

LAWRENCE G. WALLACE,
Deputy Solicitor General.

HOWARD E. SHAPIRO,
Assistant to the Solicitor General.

BRIAN K. LANDSBERG,
JOHN C. HOYLE,
JESSICA DUNSAY SILVER,
VINCENT F. O'ROURKE,
Attorneys.

FEBRUARY 1977.

APPENDICES

TABLE OF CONTENTS

	Page
A. Background of Voting Discrimination in Mississippi	1a
I. Racially discriminatory voting practices in Mississippi	1a
A. Apportionment	3a
1. The Constitution of 1890	3a
2. Recent legislative reapportionments	13a
B. The poll tax	28a
C. The literacy test	29a
D. The white primary	33a
II. The effect of the Civil Rights Acts	35a

CITATIONS

Cases:

Allen v. *State Board of Electors*, 393 U.S. 544	37a
Connor v. *Waller*, 396 F. Supp. 1308	19a
Evers v. *State Board of Elections Commissioners*, 327 F. Supp. 640, appeal dismissed, 405 U.S. 1001	37a
Gaston County v. *United States*, 395 U.S. 285	31a
Mississippi Freedom Democratic Party v. *Johnson*, 299 F. Supp. 93	37a
Moore v. *LeFlore County Board of Election Commissioners*, 361 F. Supp. 603, affirmed, 502 F. 2d 621	28a

Cases—Continued — Page

Peay v. *Cox*, 190 F. 2d 123, certiorari denied, 342 U.S. 896 — 30a
Perkins v. *Matthews*, 400 U.S. 379 — 37a
Ratliff v. *Beale*, 74 Miss. 247, 20 So. 865 — 2a, 3a, 6a, 29a
Smith v. *Allwright*, 321 U.S. 649 — 33a
South Carolina v. *Katzenbach*, 383 U.S. 301 — 1a, 2a, 32a, 35a, 36a
Stewart v. *Waller*, 404 F. Supp. 206 — 1a, 28a, 37a
United States v. *Dogan*, 314 F. 2d 767 — 29a
United States v. *Duke*, 332 F. 2d 759 — 31a, 32a
United States v. *Holmes County, Mississippi*, 385 F. 2d 145 — 29a
United States v. *Lynd*, 301 F. 2d 818, certiorari denied, 371 U.S. 893 — 31a, 32a
United States v. *Lynd*, 349 F. 2d 790 — 31a, 32a
United States v. *McClellan*, 248 F. Supp. 62 — 31a, 32a
United States v. *Ramsey*, 331 F. 2d 824 — 32a
United States v. *State of Mississippi*, 229 F. Supp. 925, reversed and remanded, 380 U.S. 128 — 1a, 2a, 30a, 31a, 33a, 34a
United States v. *State of Mississippi*, 256 F. Supp. 344 — 35a, 36a
United States v. *State of Mississippi*, 339 F. 2d 679 — 32a
United States v. *State of Mississippi*, 11 Race Rel. L. Rep. 837 — 29a, 36a

Constitutions and statutes:

United States Constitution, Fifteenth Amendment — 1a, 38a

Constitutions and statutes—Continued — Page

Miss. Const. (1890):
Art. 5, § 140 — 4a
Art. 5, § 141 — 4a
Art. 12, § 243 — 28a
Art. 12, § 244 — 29a
Art. 13, § 254 — 4a, 6a, 13a
Art. 13, § 255 — 4a, 11a, 13a
Art. 13, § 256 — 5a, 6a, 13a

Miss. Const. (1890), as amended:
Art. 12, § 243 — 29a
Art. 13, § 254 — 13a, 14a
Art. 13, § 255 — 13a, 14a
Art. 13, § 256 — 13a

Civil Rights Act of 1957, 71 Stat. 634 — 35a, 36a
42 U.S.C. (1958 ed.) 1971(c) — 35a

Civil Rights Act of 1960, 74 Stat. 86 — 35a, 36a
42 U.S.C. (1958 ed. Supp. V) 1971 (e) — 35a
42 U.S.C. 1974 — 35a

Civil Rights Act of 1964, 78 Stat. 241 — 35a, 36a
42 U.S.C. 1971 — 36a
42 U.S.C. 1971(a)(2)(A) — 35a
42 U.S.C. 1971(a)(2)(B) — 35a
42 U.S.C. 1971(a)(2)(C) — 35a
42 U.S.C. 1971(c) — 35a

Voting Rights Act of 1965, 79 Stat. 437, as amended, 42 U.S.C. 1973, *et seq.* — 2a, 35a, 36a
42 U.S.C. 1973-1973p — 36a
42 U.S.C. 1973d — 37a
42 U.S.C. 1973f — 38a

Constitutions and statutes—Continued — Page

Miss. Laws, 1882, Ch. XXVIII — 11a
Miss. Laws, 1884, Ch. LI — 11a
Miss. Laws, 1890, Ch. 33 — 11a
Miss. Laws, 1902, Ch. 66 — 33a
Miss. Laws, 1948, Ch. 309 — 34a
Miss. Laws, 1952, Ch. 464 — 34a
Miss. Laws, 1954, Ch. 427 — 30a
Miss. Laws, 1962, 2d Ex. Sess.:
- Ch. 57 — 13a, 14a
- Chs. 569-573 — 32a

Miss. Laws, 1963, 1st Ex. Sess., Ch. 34, §§ 1-7 — 13a
Miss. Laws, 1963, Ex. Sess., Ch. 34, §§ 1-7 — 14a
Miss. Laws, 1965, Ex. Sess., Ch. 40 — 32a
Miss. Laws, 1966, Ex. Sess., Ch. 41, §§ 1-2 — 13a, 15a
Miss. Laws, 1971, Ch. 394, §§ 1-2 — 13a, 17a
Miss. Laws, 1973:
- Ch. 304 — 13a, 19a
- Ch. 305 — 13a, 19a
- Ch. 456 — 13a, 19a
- Ch. 457 — 13a, 19a

Miss. Laws, 1975:
- Ch. 484, § 1 — 13a, 19a
- Ch. 510, § 1 — 13a, 19a

Miss. Code Ann., § 3273 (1942) — 35a
Miss. Code Ann., § 3129 (Recompiled 1956) — 34a
Miss. Code Ann., § 3209.6 (Supp. 1962) — 35a

Constitutions and statutes—Continued — Page

Miss. Code Ann. (1972):
- § 5-1-1 — 17a
- § 5-1-3 — 17a
- § 21-3-7 — 28a

Miscellaneous:

Biennial Report of the Secretary of State of Mississippi, 1896-1897, pp. 66-67 — 4a, 7a, 12a
Ethridge, *Mississippi Constitutions* (1928) — 5a, 11a, 13a
Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess. (1965) — 32a
Hearings on H.R. 939, H.R. 2148, H.R. 3247, H.R. 3501 before a Subcommittee of the House Committee on the Judiciary, 94th Cong., 1st Sess. (1975) — 37a, 38a
Kirwan, *Apportionment in the Mississippi Constitution of 1890*, 14 Journal of Southern History 235 (1948) — 3a
Kirwan, *Revolt of the Rednecks, Mississippi Politics: 1876-1925* (1964) — 1a, 2a, 29a, 30a
McNeily, *History of the Measures Submitted to the Committee on Elective Franchise, Apportionment, and Election in the Constitutional Convention of 1890*, Publication of the Mississippi Historical Society (1902) — 4a-5a
Mississippi Legislature, House Journal, 1890, pp. 3-5 — 7a

Miscellaneous—Continued Page

6 *National Roster of Black Elected Officials*, Joint Center for Political Studies, Washington, D.C. (August, 1976) 2a
Stone, *The Basis of White Political Control in Mississippi*, 6 Journal of Mississippi History 232 (1944) 3a, 5a
The Clarion-Ledger, Jackson, Mississippi:
July 31, 1890, p. 4, col. 3 ..... 3a
September 18, 1890, p. 5, col. 3 ..... 4a
September 18, 1890, p. 8, col. 4 ..... 4a
September 25, 1890, p. 1, col. 3 ..... 4a
September 25, 1890, p. 1, col. 5 ..... 4a
September 25, 1890, p. 3, col. 5 ..... 4a
October 2, 1890, p. 2, col. 1 ..... 5a
United States Bureau of the Census, *Census of Population: 1960*, Vol. I, *Characteristics of the Population*, Part 26, Mississippi, Table 27, pp. 61-81 ..... 15a, 16a
United States Bureau of the Census, *Census of Population: 1970, General Population Characteristics*, Mississippi, Table 35, pp. 87-107 ..... 18a
Voting in Mississippi, A Report of the United States Commission on Civil Rights (1965) ..... *passim*
Wharton, *The Negro in Mississippi, 1865-1890* (Harper Torchbook ed. 1965) 1a

TABLE OF CONTENTS—Continued

Page

B. Summary of Sources and Methodology for Statistics and Maps 39a

C. Maps and Statistical Charts Comparing Certain Districts in the Court's Final Reapportionment Plan and Alternative Plans 45a

1. *Hinds County Senate Districts:* Maps Comparing Court's Final Plan (Districts 31-35) and Alternative Plan (Districts 28-32) 46a

2. *Hinds County Senate Districts:* Comparative Description and Statistical Analysis of Court's Final Plan (Districts 31-35) and Alternative Plan (Districts 28-32) 47a

3. *Warren County House Districts (53-55):* Maps Comparing Court's Final Plan and Alternative Plan 50a

4. *City of Vicksburg (Warren County) House Districts (53-55):* Maps Comparing Court's Final Plan and Alternative Plan 51a

5. *Warren County House Districts (53-55):* Comparative Description and Statistical Analysis of Court's Final Plan and Alternative Plan 53a

6. *Forrest County House Districts (103-106):* Maps Comparing Court's Final Plan and Alternative Plan 56a

TABLE OF CONTENTS—Continued

Page

7. *City of Hattiesburg (Forrest County) House Districts:* Maps Comparing Court's Final Plan (Districts 103-105) and Alternative Plan (Districts 103-106) 57a

8. *Forrest County House Districts (103-106):* Comparative Description and Statistical Analysis of Court's Final Plan and Alternative Plan 59a

9. *Washington County House Districts:* Maps Comparing Court's Final Plan (Districts 32-35) and Alternative Plan (Districts 32, 33, 35) 62a

10. *City of Greenville (Washington County) House Districts:* Maps Comparing Court's Final Plan (Districts 32-35) and Alternative Plan (Districts 33-35) 63a

11. *Washington County House Districts (32-35):* Comparative Description and Statistical Analysis of Court's Final Plan and Alternative Plan 65a

12. *Claiborne County and Jefferson County Senate Districts:* Maps Comparing Court's Final Plan (Districts 37-38) and Alternative Plan (District 30) 68a

TABLE OF CONTENTS—Continued

Page

13. *Claiborne County and Jefferson County Senate Districts:* Comparative Description and Statistical Analysis of Court's Final Plan (Districts 37-38) and Alternative Plan (District 30) 69a

D. Statutes Involved 73a

APPENDIX A

BACKGROUND OF VOTING DISCRIMINATION IN MISSISSIPPI

I. RACIALLY DISCRIMINATORY VOTING PRACTICES IN MISSISSIPPI

The Fifteenth Amendment to the United States Constitution guaranteeing that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude" was ratified in 1870. Within a short time many of the states of the Confederacy including Mississippi began to enact legislation designed to prevent Negroes from voting. *South Carolina* v. *Katzenbach*, 383 U.S. 301. The actions of the State of Mississippi effectively denied black voters access to the political process during the period between 1890 and 1965.[1]

---

[1] The history of racial discrimination in the electoral process in Mississippi was recognized by this Court in *South Carolina* v. *Katzenbach*, 383 U.S. 301. It has been cataloged in numerous other sources including the dissenting opinion of Judge Brown in *United States* v. *State of Mississippi*, 229 F. Supp. 925, 983-997 (S.D. Miss.), reversed and remanded, 380 U.S. 128; *Voting in Mississippi*, A Report of the United States Commission on Civil Rights (1965); Kirwan, *Revolt of the Rednecks, Mississippi Politics: 1876-1925* (1964); Wharton, *The Negro in Mississippi, 1865-1890* (Harper Torchbook ed. 1965). It is a history which has resulted in "token participation by blacks in the political process of the state." *Stewart* v. *Waller*, 404 F. Supp. 206 (N.D. Miss.). In 1867 approximately 69 percent of the black voting age population of Mississippi

Prior to enactment of the Voting Rights Act of 1965, 79 Stat. 437, as amended, 42 U.S.C. 1973, *et seq.*, Mississippi employed four devices in discriminating against black participants in the electoral process: (1) a racially discriminatory apportionment of the legislature,[2] (2) an annual poll tax,[3] (3) a literacy test,[4] and (4) a "whites only" primary system.[5] In 1890 the State of Mississippi convened a Convention to enact legislation to disfranchise black voters, *Ratliff* v. *Beale*, 74 Miss. 247, 265-266, 20 So. 865, 868; see *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 310, which utilized the first three of these devices. The Supreme Court of the State of Mississippi characterized the purpose and effect of this Convention in 1896, saying:

---

was registered to vote. *Voting in Mississippi*, *supra*, at 8. In 1964 only 6.4 percent of voting age blacks in Mississippi were registered to vote. *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 313. Between 1900 and 1975 only one black candidate was ever elected to the legislature of the State of Mississippi. (R. Doc. 154, Hearing of May 7, 1975, Tr. at 46). There are currently four black members of the Mississippi House and no black members of the Senate. 6 *National Roster of Black Elected Officials*, Joint Center for Political Studies, Washington, D.C. (August, 1976).

[2] *Ratliff* v. *Beale*, 74 Miss. 247, 265-266, 20 So. 865, 868.

[3] *Ratliff* v. *Beale*, *supra*, 74 Miss. at 268, 20 So. at 868-869; *Voting in Mississippi*, *supra*, at 4-5; Kirwan, *supra*, at 74.

[4] *Voting in Mississippi*, *supra*, at 4-5; Kirwan, *supra*, at 69-74.

[5] *Voting in Mississippi*, *supra*, at 7; *United States* v. *State of Mississippi*, 229 F. Supp. 925, 989 (S.D. Miss.) (Brown, J., dissenting).

> Within the field of permissible action under the limitations imposed by the federal constitution, the convention swept the circle of expedients to obstruct the exercise of the franchise by the negro race.

Ratliff v. *Beale*, *supra*, 74 Miss. at 266, 20 So. at 868.

A. APPORTIONMENT

1. *The Constitution of 1890.*

The apportionment adopted by the Convention was designed to prevent blacks from controlling either the legislature or the executive,[6] even though blacks were

---

[6] Although there is some dispute as to whether the apportionment provisions alone would have been completely adequate to bar blacks from power, there is no dispute that that was their purpose. See Kirwan, *Apportionment in the Mississippi Constitution of 1890*, 14 Journal of Southern History 235 (1948); and Stone, *The Basis of White Political Control in Mississippi*, 6 Journal of Mississippi History 232 (1944). The Apportionment Plan submitted by the Franchise Committee was widely debated before it was adopted. *The Clarion Ledger*, a Jackson, Mississippi newspaper, published a coverage of the Convention which included the complete texts of some speeches and significant quotations from other speeches made by delegates to the Convention. *The Clarion-Ledger*, Jackson, Mississippi, July 31, 1890, p. 4, col. 3. The newspaper coverage of the delegates' debates on the apportionment proposal submitted by the Franchise Committee and adopted by the 1890 Convention make it clear that the purpose of the plan was to assure that political control of the state would be held by the whites. For example, one delegate, Mr. Street of Lauderdale County, defended the apportionment because it "* * * is as just as it can be made and at the same time lodge power where it must be with the white people of the state." *The Clarion-*

then a majority of both the population and the voting age population.[7] The Convention intended to achieve this goal by a two-step process. The first step was to be accomplished by the enactment of Miss. Const. Art. 5, §§ 140 and 141 (1890), which required that any state-wide elective official must receive a majority both of the popular vote and of the vote of an electoral college whose numbers corresponded to the House of Representatives apportionment. If any state-wide elective official failed to obtain both majorities, the election would be decided by the House of Representatives. The second step was to be accomplished by apportioning the legislature in Miss. Const. Art. 13, §§ 254 and 255, in such a way that whites would control the House of Representatives and thus both the legislature and the executive.[8]

Ledger, September 18, 1890, p. 8, col. 4. Another supported it because "[i]f it should secure white control of the state, all should be satisfied." *The Clarion-Ledger*, September 18, 1890, p. 5, col. 3. Papers throughout the nation recognized that the purpose of the plan was to maintain power for white counties, *The Clarion-Ledger*, September 25, 1890, p. 1, col. 3, one paper referring to the plan as "the apportionment gerrymander." *Id.* at col. 5. The final argument in support of the plan was made just prior to the Convention vote by Mr. Bell of Kemper who argued of the plan that "no one could deny that the most important department is in the hands of our own race." *The Clarion-Ledger*, September 25, 1890, p. 3, col. 5.

[7] Biennial Report of the Secretary of State of Mississippi, 1896-1897, pp. 66-67.

[8] McNeily, *History of the Measures Submitted to the Committee on Elective Franchise, Apportionment, and Election in the Constitutional Convention of 1890*, 134-135, Publication of the Mississippi Historical Society (1902); Ethridge, *Mississippi Constitutions* 445 (1928). McNeily was a delegate at large at the 1890 Convention.

Miss. Const. Art. 13, § 256, furthered this purpose by dividing the counties of Mississippi into three groups and guaranteeing that each group would always have a minimum of forty-four representatives. The first two groupings were made up predominantly of majority white counties, while the third group was made up entirely of majority black counties. This grouping was intended to guarantee a majority of representatives from majority white counties. The Mississippi Supreme Court, among others,[9] believed

---

[9] See Stone, *supra*, at 232. *The Clarion-Ledger*, October 2, 1890, p. 2, col. 1, quotes the *Vicksburg Post* as follows:

> First and foremost, by an ingenious arrangement of the counties and a patent gerrymander of the representation, in a state holding a 60,000 negro majority the legislature is given a white majority in both branches. If all the 60,000 negro majority is voted and honestly counted (and Senator George's purpose in advocating a convention was purification of the ballot box) then the legislature will still have a white majority.
>
> Next, each county is to have as many votes in a so-called Electoral College for state officials as it is entitled to representatives in the Legislature. So that with all the negroes voting and all their votes counted, a minority of voters will elect the state officers. This rests upon the same gerrymander as the Legislative apportionment.
>
> Both the legislative and executive branches of the government are thus secured to the minority of legal voters in the state. This means, of course, the absolute control of the entire state government—executive, legislative and judicial, for the judges and chancellors are appointed by the Governor.

that the plan had achieved its goal, saying in *Ratliff* v. *Beale*, *supra*, 74 Miss. at 266, 20 So. at 868, that:

> If we look at the map of the state and at the census reports showing the racial distribution of our population, and consider these in connection with the apportionment of the constitution, it will at once appear that unless there shall be a great shifting of populations, the control of the legislative department of the state is so fixed in the counties having majorities of whites as to render exceedingly improbable that it can be changed in the near future by the ordinary flow of immigration, or by the growth by births among our own people. The election of the chief executive of the state is also largely affected by the same means. It is in the highest degree improbable that there was not a consistent, controlling, directing purpose governing the convention by which these schemes were elaborated and fixed in the constitution. Within the field of permissible action under the limitations imposed by the federal constitution, the convention swept the circle of expedients to obstruct the exercise of the franchise by the negro race.

The apportionment established by §§ 254 and 256 minimized black voting strength. In the 1890 legislative session which preceded the Convention, majority black voting age population districts had sixty-six representatives in the House, while majority white voting age population districts had fifty-four representatives. Under the revised Constitution black strength was lessened by the addition of thirteen representatives to the legislature, ten from majority

white voting age population districts. Under this plan, majority black voting age population districts would elect 69 representatives and the majority white voting age population districts would elect the remaining 64 representatives.[10]

---

[10] The apportionment of the 1890 Mississippi House of Representatives can be seen from the January 7, 1890 roll-call of Representatives-elect of that body. Mississippi Legislature, House Journal, 1890, pp. 3-5. Under this plan black voters could elect 44 representatives from the counties listed in Group III, *infra*. They could also elect representatives in the majority black voting age population counties of Marshall (3), Monroe (3), Clay (2), Grenada (1), Lowndes (3), Oktibbeha (2), Noxubee (3), Kemper (1), Rankin (2) and Carroll (2). Under §§ 254 and 256, black voters could elect 45 representatives in black majority Group III. They could also elect representatives in the black majority counties of Marshall (3), Monroe (3), Clay (2), Grenada (1) plus one floater (1), Lowndes (3), Oktibbeha (2), Noxubee (3), Kemper (2), Rankin (2) and Carroll (2). All statistics are based on the 1890 census as shown in the Biennial Report of the Secretary of State of Mississippi, 1896-1897, pp. 66-67.

GROUPINGS ESTABLISHED BY MISSISSIPPI CONSTITUTION, ARTICLE 13, § 256 (1890)

GROUP I

County	White Male Voting Age Population	Black Male Voting Age Population	Total White Population	Total Black Population
Tishomingo	1,716	177	8,311	991
Alcorn	1,994	656	9,605	3,510
Prentiss	2,227	532	10,833	2,846
Lee	2,682	1,422	12,510	7,520
Itawamba	2,166	173	10,723	985
Tippah	2,053	500	10,026	2,925
Union	2,424	716	11,608	3,998
Benton	1,230	877	5,665	4,920
Marshall	2,170	3,039	9,731	16,312
Lafayette	2,443	1,672	11,700	8,853
Pontotoc	2,201	777	10,585	4,355
Monroe	2,809	3,582	12,109	18,621
Chickasaw	2,796	2,110	8,491	11,400
Calhoun	2,229	619	11,276	3,412
Yalobusha	1,817	1,721	7,683	8,946
Grenada	952	2,085	3,896	11,078
Carroll	1,788	1,965	8,161	10,612
Montgomery	1,660	1,254	7,448	7,011
Choctaw	1,666	445	8,208	2,639
Webster	1,837	513	9,080	2,980
Clay	1,325	2,547	5,624	12,983
Lowndes	1,437	4,412	6,009	21,038
Oktibbeha	1,289	2,141	5,759	11,935
	44,911	33,935	205,041	179,870

GROUP II

County	White Male Voting Age Population	Black Male Voting Age Population	White Population	Black Population
Attala	2,701	1,691	12,742	9,471
Winston	1,469	857	6,987	5,102
Noxubee	1,075	4,312	4,709	22,629
Kemper	1,654	1,751	7,869	10,092
Leake	1,907	973	9,350	5,453
Neshoba	1,641	491	8,351	2,795
Lauderdale	3,507	2,914	14,671	14,990
Newton	2,096	1,162	10,119	6,506
Scott	1,438	866	7,000	4,740
Rankin	1,639	1,825	7,507	10,415
Clarke	1,543	1,356	7,716	8,110
Jasper	1,487	1,256	7,368	7,417
Smith	1,679	284	8,924	1,711
Simpson	1,191	663	6,229	3,909
Copiah	3,073	2,884	14,632	15,601
Franklin	1,171	860	5,484	4,940
Lincoln	2,133	1,412	10,325	7,587
Lawrence	1,246	957	6,240	6,078
Covington	1,053	487	5,319	2,980
Jones	1,346	289	7,082	1,251
Wayne	1,154	719	5,799	4,018
Greene	614	188	2,936	970
Perry	1,013	410	4,582	1,912
Marion	1,314	542	6,530	3,002
Pike	2,390	1,829	10,581	10,622
Pearl River	478	146	2,301	656
Hancock	1,296	577	5,770	2,548
Harrison	2,030	735	9,163	3,318
Jackson	1,688	766	7,814	3,437
	47,026	33,202	224,100	182,260

GROUP III

County	White Male Voting Age Population	Black Male Voting Age Population	White Population	Black Population
Adams	1,620	4,009	6,128	19,903
Amite	1,645	1,903	7,600	10,598
Bolivar	1,246	7,212	3,222	26,758
Claiborne	836	2,155	3,533	10,983
Coahoma	800	4,169	2,445	16,097
DeSoto	1,640	3,547	6,957	17,226
Holmes	1,712	4,750	7,084	23,886
Hinds	2,700	5,566	10,892	28,387
Issaquena	249	2,720	736	11,582
Jefferson	846	2,810	3,589	15,358
Leflore	893	3,494	2,597	14,272
Madison	1,428	3,942	6,031	21,290
Panola	2,062	3,442	9,248	17,729
Quitman	285	587	894	2,392
Sunflower	712	1,810	2,530	6,854
Tallahatchie	1,161	1,944	5,154	9,207
Tate	1,853	2,001	8,495	10,758
Tunica	437	2,797	1,259	10,899
Warren	2,471	5,552	8,803	24,361
Washington	1,700	9,103	4,838	35,576
Wilkinson	928	2,412	3,962	13,630
Yazoo	1,965	5,697	8,690	27,704
Sharkey	378	1,682	1,223	7,159
	29,567	83,304	115,910	382,609

The apportionment of the Senate was also intended to dilute black voting strength. Ethridge, *Mississippi Constitutions* 443 (1928). Prior to the 1890 Convention, the majority black and the majority white voting age population counties each controlled 20 Senate seats.[11] The 1890 Convention increased the number of senators by five, also increasing the number of senators representing majority white voting age population counties by five. Moreover, available statistics show that in a number of instances the 1890 Senate apportionment in § 255 diluted black voting strength in both multi-member and single-member districts by joining majority black counties with larger white majority counties to make up pairings for Senate seats. Majority black Rankin, Kemper, Oktibbeha, Carroll and Clay counties were all diluted in this manner in single-member districts, while majority black Marshall, Tate and Monroe counties were diluted in multi-member districts.[12]

---

[11] Miss. Laws, 1882, Ch. XXVIII, as amended, Miss. Laws, 1884, Ch. LI, as amended, Miss. Laws, 1890, Ch. 33.

[12] [See footnote on following page]

[12]

District	Number of Senators	County	Male White Voting Age Population	Male Black Voting Age Population
5	1	Rankin	1,639	1,825
		Smith	1,679	284
			3,318	2,109
15	1	Kemper	1,654	1,751
		Winston	1,469	857
			3,123	2,608
23	1	Choctaw	1,666	445
		Oktibbeha	1,289	2,141
			2,955	2,586
24	1	Clay	1,325	2,547
		Webster	1,837	513
			3,162	3,060
26	1	Carroll	1,788	1,965
		Montgomery	1,660	1,254
			3,448	3,219
36	3	Union	2,424	716
		Tippah	2,053	500
		Benton	1,230	877
		Marshall	2,170	3,039
		Tate	1,853	2,001
			9,730	7,133
38	2	Monroe	2,809	3,582
		Lee	2,682	1,422
		Itawamba	2,166	173
			7,657	5,177

Statistics are based on the 1890 Census as contained in the Biennial Report of the Secretary of State of Mississippi, 1896-1897, pp. 66-67.

The apportionment plan established in Miss. Const. Art. 13, §§ 254-256, was changed only in minor ways [13] not relevant to this case until 1962 when § 256 was repealed and §§ 254 and 255 were substantially amended by Miss. Laws, 1962, 2d Ex. Sess., Ch. 57. Thus, for almost 75 years, the State of Mississippi elected its legislature in accordance with an apportionment plan which avowedly was intended to minimize the effectiveness of black participation in the electoral process and to guarantee white supremacy. Ethridge, *Mississippi Constitutions* 445 (1928).

2. *Recent Legislative Reapportionments.*

In the past fifteen years the Mississippi legislature has enacted major reapportionment legislation five times.[14] In each reapportionment, the legislature diluted the strength of black voters in majority black counties by utilizing, for at least one legislative chamber, a technique first employed by the 1890 Convention, the pairing of majority black counties with

[13] Seven seats were added to the House of Representatives and four seats were added to the Senate to accommodate the seven new counties. In addition some residency requirements were altered, candidates from some districts were required to run from posts, and sub-districts within some counties were created.

[14] (1) Miss. Laws, 1962, 2d Ex. Sess., Ch. 57, effective 1963; Miss. Laws, 1963, 1st Ex. Sess., Ch. 34, §§ 1-7;
(2) Miss. Laws, 1966, Ex. Sess., Ch. 41, §§ 1-2;
(3) Miss. Laws, 1971, Ch. 394, §§ 1-2;
(4) Miss. Laws, 1973, Chs. 304, 305; Miss. Laws, 1973, Chs. 456, 457.
(5) Miss. Laws, 1975, Ch. 484, § 1, and Ch. 510, § 1.

larger majority white counties in single-member and multi-member districts.

a. The 1962 Constitutional Amendment to §§ 254 and 255, Miss. Laws, 1962, 2d Ex. Sess., Ch. 57, as implemented by the legislature in Miss. Laws, 1963, Ex. Sess., Ch. 34, §§ 1-7, was the most thorough reapportioning of that body since 1890. The plan for the House abandoned the technique of pairing counties into districts, while the plan for the Senate increased the number of Senators and thoroughly rearranged many historical county groupings. At least one thing remained constant, however; the pairings in the Senate plan diluted the strength of black majority counties. The black voters of Noxubee and Kemper counties were deprived of their ballot strength in this manner in a single-member district and the black voters of Tallahatchie were deprived in this manner in a multi-member district.[15]

---

[15]

1962 APPORTIONMENT

District	Number of Senators	County	White VAP	Non-White VAP*
31	2	Tallahatchie	5,099	6,483
		Yalobusha	4,572	2,441
		Grenada	5,792	4,323
			15,463	13,247
35	1	Oktibbeha	8,423	4,952
		Noxubee	2,997	5,172
			11,420	10,124
37	1	Neshoba	9,143	2,565
		Kemper	3,113	3,221
			12,256	5,786

[Footnote continued on page 15a]

b. In 1966, the Mississippi legislature again reapportioned the Senate and House. Miss. Laws, 1966, Ex. Sess., Ch. 41, §§ 1-2. This plan reinstituted the pairings of counties in multi-member districts in the House. It again combined black majority with white majority counties.[16]

---

[15] [Continued]

The statistics are based on the 1960 Census. (United States Bureau of the Census, *Census of Population: 1960*, Vol. I, *Characteristics of the Population*, Part 26, Mississippi, Table 27, pp. 61-81.) The 1960 Census does not break down non-white population by age and race. However, the non-white population in Mississippi at the time of the 1960 Census was generally approximately 99 percent black except in Neshoba County where it was 79.4 percent black, Leake County where it was 93.6 percent black, Kemper County where it was 96.8 percent black and Newton County where it was 94.2 percent black.

[16]

1966 APPORTIONMENT

HOUSE

District	Number of Representatives	Counties	White VAP	Non-White VAP
9	2	Jefferson	1,666	3,540
		Lincoln	11,072	3,913
			12,738	7,453
10	2	Kemper	3,113	3,221
		Neshoba	9,143	2,565
			12,256	5,786
12	3	Claiborne	1,688	3,969
		Warren	13,530	10,726
			15,218	14,695

SENATE

2	1	Benton	2,514	1,419
		Marshall	4,342	7,168
		Tippah	7,513	1,281
			14,369	9,868

[Footnote continued on page 16a]

[16] [Continued]

District	Number of Representatives	Counties	White VAP	Non-White VAP
7	2	Calhoun	7,188	1,767
		Grenada	5,792	4,323
		Tallahatchie	5,099	6,483
		Yalobusha	4,572	2,441
			22,651	15,014
18	1	Noxubee	2,997	5,172
		Oktibbeha	8,423	4,952
			11,420	10,124
20	1	Kemper	3,113	3,221
		Neshoba	9,143	2,565
			12,256	5,786
24	1	Issaquena	640	1,081
		Warren	13,530	10,726
			14,170	11,807
25	4	Claiborne	1,688	3,969
		Hinds	67,836	36,138
			69,524	40,107
31	1	Jefferson	1,666	3,540
		Lincoln	11,072	3,913
			12,738	7,453
33	2	Amite	4,449	3,560
		Franklin	3,403	1,842
		Pike	12,163	6,936
		Wilkinson	2,340	4,120
			22,355	16,458

Statistics are based on the 1960 Census (United States Bureau of the Census, *Census of Population: 1960*, Vol. I, *Characteristics of the Population*, Part 26, Mississippi, Table 27, pp. 61-81.) The 1960 Census does not break down non-white population by age and race. However, the non-white population in Mississippi at the time of the 1960 Census was generally approximately 99 percent black except in Neshoba County where it was 79.4 percent black, Leake County where it was 93.6 percent black, Kemper County where it was 96.8 percent black and Newton County where it was 94.2 percent black.

c. In 1971, the Mississippi legislature was again reapportioned. Miss. Laws, 1971, Ch. 394, §§ 1-2, codified as Miss. Code Ann., §§ 5-1-1 and 5-1-3 (1972); and various black majority counties again were combined with white majority counties.[17]

[17]

1971 APPORTIONMENT

HOUSE

District	Number of Representatives	Counties	White VAP	Black VAP
2	4	Benton	3,012	1,437
		DeSoto	14,158	6,130
		Marshall	5,975	7,578
			23,145	15,145
21	2	Noxubee	3,342	4,713
		Winston	7,776	3,849
			11,118	8,562
26	4 (Floterial)	Rankin	20,604	7,547
		Madison	7,413	9,680
			28,017	17,227
27	5	Issaquena	687	836
		Sharkey	2,113	2,703
		Washington	20,416	19,747
			23,216	23,286
29	3	Claiborne	1,804	4,491
		Warren	17,145	10,574
			18,949	15,065
31	2	Jefferson	1,635	3,685
		Lincoln	12,381	4,309
			14,016	7,994

[Footnote continued on page 18a]

[17] [Continued]

District	Number of Representatives	Counties	White VAP	Black VAP
40	2	Amite	4,768	3,466
		Franklin	3,441	1,728
		Wilkinson	2,426	4,073
			10,635	9,267
		SENATE		
2	2	Marshall	5,975	7,578
		Lafayette	13,391	3,445
		Union	11,127	1,670
		Pontotoc	9,844	1,696
			40,337	14,389
8	1	Tallahatchie	5,202	5,606
		Grenada	7,691	4,601
			12,893	10,207
13	1	Choctaw	4,202	1,203
		Winston	7,776	3,849
		Noxubee	3,342	4,713
			15,320	9,765
15	1	Sharkey	2,113	2,703
		Yazoo	8,416	7,656
		Issaquena	687	836
			11,216	11,195
19	2	Rankin	20,604	7,547
		Madison	7,413	9,680
			28,017	17,227
27	1	Lincoln	12,381	4,309
		Franklin	3,441	1,728
		Jefferson	1,635	3,685
			17,457	9,722
29	2	Amite	4,768	3,466
		Pike	12,637	7,473
		Walthall	5,153	2,612
		Wilkinson	2,426	4,073
			24,984	17,624

Statistics are based on the United States Bureau of Census *1970 Census of Population, General Population Characteristics*, Mississippi, Table 35, pp. 87-107.

d. The apportionment plans enacted in 1973, Miss. Laws, 1973, Chs. 304, 305; Miss. Laws, 1973, Chs. 456, 457; and in 1975, Miss. Laws, 1975, Ch. 484, § 1, and Ch. 510, § 1, were an attempt to comply with the one person-one vote requirement. *Connor* v. *Waller*, 396 F. Supp. 1308, 1310 (S.D. Miss.). They followed the prior pairings of counties.

There were 17 counties in Mississippi with a majority black voting age population. With respect to the House, they were treated in five ways:

(1) combined with white voting age majority counties to form white voting age majority districts—

Districts	Number of Representatives	Counties	WVAP	BVAP	% BVAP
3	3	DeSoto	14,158	6,130	30.21
		Marshall	5,975	7,578	55.91
			20,133	13,708	40.51
15	4	Issaquena	687	836	54.89
		Washington	20,416	19,747	49.17
			21,103	20,583	49.38
23	2	Lowndes	22,568	8,719	27.87
	2	Noxubee	3,342	4,713	58.51
		Oktibbeha	14,072	5,003	26.23
			17,414	9,716	35.81
	1	Lowndes	22,568	8,719	27.87
		Noxubee	3,342	4,713	58.51
		Oktibbeha	14,072	5,003	26.23
			39,982	18,435	31.56
29	2	Sharkey	2,113	2,703	56.13
		Yazoo	8,416	7,656	47.64
			10,529	10,359	49.59

Districts	Number of Representatives	Counties	WVAP	BVAP	% BVAP
30	3	Claiborne	1,804	4,491	71.34
		Warren	17,145	10,574	38.15
			18,949	15,065	44.29
34	2	Amite	4,768	3,466	42.09
		Franklin	3,441	1,728	33.43
		Wilkinson	2,426	4,073	62.67
			10,635	9,267	46.56

(2) combined with white voting age majority counties to form white voting age majority floterial districts in which one of the subdistricts has a majority black voting age population—

28	1	Madison	7,413	9,680	56.63
	2	Rankin	20,604	7,547	26.81
			28,017	17,227	38.08

(3) combined with other black majority counties to form black majority districts and subdistricts—

11	2	Coahoma	9,509	13,235	58.19
	1	Quitman	4,370	4,398	50.16
		Tunica	2,148	4,167	65.99
			6,518	8,565	56.79
	1	Coahoma	9,509	13,235	58.19
		Quitman	4,370	4,398	50.16
		Tunica	2,148	4,167	65.99
			16,027	21,800	57.63
16	2	Holmes	5,344	8,219	60.60
		Humphreys	3,444	4,625	57.32
			8,788	12,844	59.38

(4) constituted as single county districts—

14	3	Bolivar	13,180	14,778	52.86
13	2	Sunflower	9,569	11,598	54.79
12	1	Tallahatchie	5,202	5,606	51.87

(5) combined with white majority counties to form black majority districts—

Districts	Number of Representatives	Counties	WVAP	BVAP	% BVAP
17	3	Carroll	3,260	2,460	43.01
		Leflore	11,956	12,830	51.76
			15,216	15,290	50.12
32	2	Copiah	8,696	6,671	43.41
		Jefferson	1,635	3,685	69.27
			10,331	10,356	50.06

The same pattern existed in the Senate:

(1) black majority counties were combined with white majority counties to form white majority districts—

Districts	Number of Senators	Counties	WVAP	BVAP	% BVAP
1	2	DeSoto	14,158	6,130	30.21
		Lafayette	13,391	3,445	20.46
		Marshall	5,975	7,578	55.91
			33,524	17,153	33.85
9	1	Quitman	4,370	4,398	50.16
		Tate	6,732	4,168	38.24
		Tunica	2,148	4,167	65.99
			13,250	12,733	49.01
14	1	Grenada	7,691	4,601	37.43
		Tallahatchie	5,202	5,606	51.87
			12,893	10,207	44.19
18	1	Noxubee	3,342	4,713	58.51
		Oktibbeha	14,072	5,003	26.23
			17,414	9,716	35.81
24	2	Claiborne	1,804	4,491	71.34
		Copiah	8,696	6,671	43.41
		Lincoln	12,381	4,309	25.82
		Simpson	9,132	3,403	27.15
			32,013	18,874	37.09
25	2	Adams	12,566	9,893	44.05
		Amite	4,768	3,466	42.09
		Franklin	3,441	1,728	33.43
		Jefferson	1,635	3,685	69.27
		Wilkinson	2,426	4,073	62.67
			24,836	22,845	47.91

(2) black majority counties were combined with other black majority counties to form black majority districts—

Districts	Number of Senators	Counties	WVAP	BVAP	% BVAP
11	2	Bolivar	13,180	14,778	52.86
		Sunflower	9,569	11,598	54.79
			22,749	26,376	53.69

(3) black majority counties were constituted as single county districts—

10	1	Coahoma	9,509	13,235	58.19
13	1	Leflore	11,956	12,830	51.76

(4) black majority counties were combined with white majority counties to form black majority districts—

12	2	Humphreys	3,444	4,625	57.32
		Washington	20,416	19,747	49.17
			23,860	24,372	50.53
15	2	Holmes	5,344	8,219	60.60
		Issaquena	687	836	54.89
		Madison	7,413	9,680	56.63
		Sharkey	2,113	2,703	56.13
		Yazoo	8,416	7,656	47.64
			23,973	29,094	54.83

(a) Black majority counties were combined with white majority counties to form 21 House and Senate districts and subdistricts. Only five of these districts and subdistricts had black majority voting age populations: House Districts 17 (50.12 percent), 32 (50.06 percent) and the subdistrict of Madison County in District 28 (56.63 percent) and Senate Districts 12 (50.53 percent) and 15 (54.83 percent). Three of these districts had only very slight black voting age population majorities.

Senate District 12 was composed of Humphreys (57.32 percent black VAP) and Washington (49.17 percent black VAP) counties. White majority Washington County is on the western border of Mississippi and is completely surrounded by black majority counties (Bolivar, Sunflower, Humphreys, Sharkey, and Issaquena). Since the population of Washington County is 70,581 it was too small to have two senators of its own under the requirements of one person-one vote and had to be combined with another county to form a Senate district. Washington County could have been combined with either Bolivar County or Sharkey County to form a district whose population approximates or is slightly less than a multiple of 42,633, the norm for a Senate district at that time. Those combinations would have produced districts with approximately the same black voting age population: with Bolivar (50.68 percent); with Sharkey (49.91 percent).

Senate District 15 is comprised of Holmes (60.60 percent black VAP), Issaquena (54.89 percent black VAP), Madison (56.63 percent black VAP), Sharkey (56.13 percent black VAP), and Yazoo (47.64 percent black VAP). White majority Yazoo County is bordered by the black majority counties with which it is combined, black majority Humphreys County, and white majority Warren and Hinds Counties. Warren and Hinds Counties are themselves Senate districts. Yazoo County, with a population of 27,304 is too small to constitute a Senate district. It could not have been combined with Warren to produce a

population which approximates a multiple of 42,633. If Yazoo County were combined with Hinds County, it would have placed Yazoo at a disadvantage since Hinds elected 5 senators at large; if 6 senators were elected at large from Hinds and Yazoo Counties combined, Yazoo might have had no representation. A combination of Yazoo and Humphreys Counties would have yielded a black voting age population majority district (50.87 percent). It does not appear that Yazoo County could have been combined with a contiguous county to create a white majority district.

House District 17 was composed of white majority Carroll County (43.01 percent black VAP) and black majority Leflore County (51.76 percent) to form a 50.12 percent black voting age population. Although Carroll County is bordered by white majority counties Grenada, Montgomery, and Attala, a combination with any of the three would not have produced a district with population approximating a multiple of 18,171, the norm for a House district at that time.

House District 32, which has a black voting age population of 50.06 percent, was comprised of white Copiah County (43.41 percent black) and black Jefferson County (69.27 percent).

House District 28 which has a 38.08 percent black voting age population is a floterial district electing four representatives. Madison County which has a 56.63 percent black voting age population is combined with Rankin County, which has a 26.81 percent black voting age population, to elect one repre-

sentative from the floater district. The subdistrict of Rankin County elects two representatives, and the subdistrict of Madison County elects one representative.

In sum, it appears that where black majority counties were combined with white majority counties, white majority districts were produced wherever possible. In the five instances where black majority districts and subdistricts were formed by such a combination, three of the five majorities were very slim and in two of the five it is unlikely that a white majority county could have been formed from contiguous counties.

(b) Black majority counties were combined with other black majority counties to form black majority districts and subdistricts in five instances: the three subdistricts of House District 11, House District 16 and Senate District 11.

House District 11, comprised of black majority Coahoma, Quitman, and Tunica Counties bordered on all black majority counties except Tate and DeSoto. Tate was a district itself and DeSoto was combined with a black majority county (Marshall) to form a white majority district. If Coahoma, Quitman, and Tunica were combined with Tate they would have formed a district with a black voting age population of 53.29 percent.

Holmes and Humphreys Counties are combined to form House District 16. The only white counties that border those two counties are Yazoo, Carroll, and Washington which were combined with black majority counties and Attala County, which was itself a district. If Holmes and Humphreys were combined with Attala they would have formed a district with a black voting age population of 50.04 percent.

Senate District 11 was composed of Bolivar and Sunflower Counties. The only white majority county bordering these counties was Washington which, as discussed, *supra*, if combined with Bolivar County would have produced a black majority district.

(c) There are five black majority counties which are constituted districts: House Districts 14, 13, and 12 and Senate Districts 10 and 13.

House Districts 14 (Bolivar County) and 13 (Sunflower County) could not be combined with a contiguous county to produce a white majority district. House District 12 (Tallahatchie County) could have been combined with white majority Grenada County to form a white majority district, the approximate size of a House district, but Grenada was combined with Montgomery County, producing the same result.

Senate District 10 (Coahoma County) could not have been combined with a white majority county since it does not share a border with one. The only white majority counties bordering Senate District 13 (Leflore County) are Carroll and Grenada Counties. If combined, these counties would have a population which did not approximate the norm for a Senate district.

In conclusion, black majority districts were formed from black majority counties only where there were

no feasible combinations of those counties with other counties which would produce white majority districts, continuing the pattern of discriminatory apportionment established in 1890.[18]

B. THE POLL TAX

The second means of disfranchising black voters adopted by the 1890 Convention was a poll tax. Miss. Const. Art. 12, § 243 (1890). The poll tax disfranchised blacks by providing a disincentive to the ex-

[18] The history of the abuse of apportionment to deny blacks access to the political system in Mississippi is not limited to state-wide apportionment plans. In the 1960's and 1970's officials of the State of Mississippi also denied blacks full participation in the electoral process by discriminatorily constituting municipal electoral bodies so as to dilute the strength of black votes. In 1962, the legislature of the State of Mississippi passed legislation prescribing majority vote, at-large elections for all municipal aldermanic posts. Miss. Code Ann. § 21-3-7 (1972). A three-judge court subsequently held that this legislation violated the Fourteenth and Fifteenth Amendment because it was "a purposeful device concerned and operated to further racial discrimination in the voting process," *Stewart* v. *Waller*, 404 F. Supp. 206, 215 (N.D. Miss.). Thus many aldermanic elections in the State of Mississippi between 1962 and 1975 were conducted in a racially discriminatory manner. In municipalities in which blacks did not have at least a 2:1 population majority, the number of black aldermen elected never exceeded 1 percent of the total number of aldermen elected in those municipalities. *Id.* at 215.

Similarly, in *Moore* v. *LeFlore County Board of Election Commissioners*, 361 F. Supp. 603 (N.D. Miss.), affirmed, 502 F.2d 621 (C.A. 5), a reapportionment plan for the Leflore County Board of Supervisors was held to be unconstitutional because its "purpose and effect * * * was to divide the black population and dilute the black vote in the county." *Id.* at 607.

ercise of the franchise by poor blacks. Kirwan, *supra*, at 69-74. In *Ratliff* v. *Beale*, *supra*, 74 Miss. at 268, 20 So. at 869, the Mississippi Supreme Court analyzed the purpose and effect of the poll tax enacted by the 1890 Convention. It ruled that the poll tax was "primarily intended by the framers of the constitution as a clog upon the franchise, and, secondarily and incidentally only, as a means of revenue." (*Ibid.*) In later years, the poll tax was utilized as a means of disfranchising black voters because the requirement that the poll tax be paid for two consecutive years erected a procedural hurdle subject to discriminatory application by local officials.[19]

C. THE LITERACY TEST

The literacy or understanding test enacted by the 1890 Convention in Miss. Const. Art. 12, § 244

[19] See *Voting in Mississippi, supra*, at 19. The decisions of the United States Court of Appeals for the Fifth Circuit in *United States* v. *Dogan*, 314 F.2d 767, and *United States* v. *Holmes County, Mississippi*, 385 F.2d 145, demonstrate the manner in which registrars in Tallahatchie County and Holmes County utilized the poll tax to disfranchise black voters by refusing to accept their payments or by making it procedurally more difficult for black voters to pay their poll tax. This practice was carried on in many counties in Mississippi even up until the mid 1960's, *Voting in Mississippi, supra*, at 19, when the poll tax was declared unconstitutional in *United States* v. *State of Mississippi*, 11 Race Rel. L. Rep. 837 (S.D. Miss.). The repeal of the poll tax was approved by the electorate of Mississippi on November 4, 1975, and the poll tax was deleted from the Constitution by proclamation of the Secretary of State on December 8, 1975. Miss. Const. Art. 12, § 243, repealed (Supp. 1976).

(1890), required an applicant for registration either to read a section of the constitution or to understand the same when read to him or to give a reasonable interpretation thereof. Since illiterate blacks greatly exceeded illiterate whites, *United States* v. *State of Mississippi*, 229 F. Supp. 925, 990-993 (S.D. Miss.) (Brown, J., dissenting), and since there was a general understanding that the test would be administered so as to disfranchise only blacks, the understanding test was viewed as a loophole to qualify illiterate whites who would otherwise be disfranchised with the illiterate blacks. Kirwan, *supra*, at 70; *Voting in Mississippi*, *supra*, at 4-5); *United States* v. *State of Mississippi*, *supra*, 229 F. Supp. at 988 (Brown, J., dissenting).

The literacy test has in fact been utilized in Mississippi to disfranchise black voters. The Fifth Circuit has ruled many times that registrars in Mississippi were utilizing literacy tests to discriminate against black voters. In *Peay* v. *Cox*, 190 F. 2d 123 (C.A. 5), certiorari denied, 342 U.S. 896, the practice of the registrar of Forrest County who required that blacks be able to read and to understand sections of the Mississippi Constitution, while not requiring either for white applicants, was questioned by the Fifth Circuit. A bill was then enacted which codified the Forrest County registrar's practice of requiring an ability both to read and to interpret the Constitution. Miss. Laws, 1954, Ch. 427. This bill exempted all persons registered before January 1, 1954, about one-twentieth of the eligible blacks and about two-thirds of the adult white population. *Voting in*

Mississippi, *supra*, at 6. The proponents of this bill indicated that its purpose was " 'solely to limit Negro registration.' " *Ibid.* Subsequent events showed that the "read and understand" requirement achieved its proponents' purpose.[20] Registrars illegally disfranchised blacks by (1) discriminating in the choice of constitutional sections by requiring blacks to read and interpret more difficult sections of the Constitution; *United States* v. *Lynd*, 349 F. 2d 790, 792 n. 5 (C.A. 5); *United States* v. *Lynd*, 301 F. 2d 818, 822 n. 1 (C.A. 5), certiorari denied, 371 U.S. 893; *United States* v. *Duke*, 332 F. 2d 759 (C.A. 5); *Voting in Mississippi*, *supra*, at 14; (2) discriminating in determining whether black applicants had properly interpreted the sections assigned by the use of a double standard less favorable to blacks; *United States* v. *Lynd*, 349 F. 2d 790, 792 n. 3 (C.A. 5); *Voting in Mississippi*, *supra*, at 14; and by (3) discriminating in assisting whites to register but not assisting blacks. *United States* v. *Lynd*, 301 F. 2d 818, 821 (C.A. 5), certiorari denied, 371 U.S. 893; *United States* v. *McClellan*, 248 F. Supp. 62, 66 (S.D. Miss.); *United States* v. *Duke*, 332 F. 2d 759 (C.A. 5); *Voting in Mississippi*, *supra*, at 14.

---

[20] Moreover, the discriminatory application of the "understanding test" was enhanced by the fact that blacks in the State of Mississippi up until very recent times were afforded an education far inferior to that afforded whites. *Voting in Mississippi*, *supra*, at 41-47; *United States* v. *State of Mississippi*, *supra*, 229 F. Supp. at 990-994 (Brown, J., dissenting). See *Gaston County* v. *United States*, 395 U.S. 285, 296-297.

During the period between 1957 and 1965, federal courts considering the application of registration procedures in the State of Mississippi found that blacks were being discriminated against and illegally disfranchised through the abuse of the "read and understand" test. *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 312; Hearings on S. 1564 before the Senate Committee on the Judiciary, 89th Cong., 1st Sess., Part 2, pp. 1485-1489 (1965). See also *United States* v. *Duke*, *supra* (Panola County); *United States* v. *Ramsey*, 331 F. 2d 824 (C.A. 5) (Clarke County); *United States* v. *State of Mississippi*, 339 F. 2d 679 (C.A. 5) (Walthall County); *United States* v. *Lynd*, 349 F. 2d 790 (C.A. 5) (Forrest County); *United States* v. *McClellan*, *supra* (Holmes County).[21]

[21] Nor can it be said that the State of Mississippi merely passively observed county registrars discriminate against blacks. On April 10, 1962, the United States Court of Appeals for the Fifth Circuit issued a temporary injunction ordering the registrar of Forrest County, Mississippi, to assist black applicants as he had previously assisted whites, to ignore insignificant errors and omissions on blacks' forms, and to stop requiring that each unsuccessful black applicant wait six months before reapplying. *United States* v. *Lynd*, 301 F.2d 818 (C.A. 5), certiorari denied, 371 U.S. 893. Within seven days legislation was introduced in the Mississippi legislature which among other things: (1) strengthened the law requiring that each applicant execute an error-free form without any assistance; (2) established a requirement that the names of applicants be published in a local newspaper once a week for two weeks as an invitation to voters to challenge the qualification of applicants; and (3) directed the registrar not to advise applicants of the reason for their rejection Miss. Laws, 1962, Chs. 569-573; *Voting in Mississippi*, *supra*, at 9. In 1965, after the passage of the Voting Rights Act of 1965, Mississippi changed its registration requirements and now only requires an applicant to be able to read and write. Miss. Laws, 1965, Ex. Sess., Ch. 40.

D. THE WHITE PRIMARY

In 1902 the State of Mississippi provided that party nomination for state and local offices should be made pursuant to a primary election and that the executive committee of any party was authorized to exclude any person from its primary. Miss. Laws, 1902, Ch. 66. From 1902 until 1944 Democratic Party primaries remained closed to blacks pursuant to resolution of the Democratic Committee. *Voting in Mississippi*, *supra*, at 6-7. Since during that period of time nomination by the Democratic Party in Mississippi virtually guaranteed election, in all statewide and county elections, and in most local elections, the effect of exclusion from the primary was total disfranchisement. *Id.* at 7.

In 1944 this Court held that "white primaries" were unconstitutional in *Smith* v. *Allwright*, 321 U.S. 649. Until 1947 this decision had no effect in Mississippi; no appreciable increase in black participation in the primary process occurred. *Voting in Mississippi*, *supra*, at 7; *United States* v. *State of Mississippi*, *supra*, 229 F. Supp. at 989 (Brown, J., dissenting).[22] In 1948 the Mississippi legislature provided that no one could participate in any primary unless he had been "in accord with the party holding such primary within the two preceding years"; only such persons could not be "excluded from such pri-

[22] In the primary of 1946, the first after *Smith* v. *Allwright*, *supra*, blacks attempting to vote were turned away by election officials, apparently acting on their own initiative. *Voting in Mississippi*, *supra*, at 7.

mary by any regulation of the state executive committee of the party holding such primary." Miss. Laws, 1948, Ch. 309; Miss. Code Ann., § 3129 (Recompiled 1956). Moreover, each voter's qualifications and "accord" with the principle of the party could be challenged at the polls. *Ibid.* The Mississippi Democratic Party responded by adopting principles endorsing racial segregation unacceptable to the great majority of blacks, *United Sates* v. *State of Mississippi*, *supra*, 229 F. Supp. at 989 (Brown, J., dissenting),[23] such as the following resolution adopted by the Democratic State Convention on July 28, 1964 (*Voting in Mississippi*, *supra*, at 8):

> We believe in separation of the races in all phases of our society. It is our belief that the separation of the races is necessary for the peace and tranquillity of all the people of Mississippi and the continuing good relationship which has existed over the years.

Such action continued to deny blacks participation in the primary process. *United States* v. *State of Mississippi*, *supra*, 229 F. Supp. at 989 (Brown, J., dissenting). No blacks were nominated for state offices in Democratic Party Primaries between 1900 and 1975, R. Doc. 154, Hearing of May 7, 1975, Tr. at 46.[24]

---

[23] These principles were endorsed by the state in a 1952 Resolution, Miss. Laws, 1952, Ch. 464. *United States* v. *State of Mississippi*, *supra*, 229 F. Supp. at 989 (Brown, J., dissenting).

[24] In August 1975 several black candidates were nominated for the legislature in Democratic Party Primaries (R. Doc. 209, submission of the United States pursuant to October 24, 1975, Court Order filed January 26, 1976).

II. THE EFFECT OF THE CIVIL RIGHTS ACTS

Congress responded to evidence of black disfranchisement in Mississippi and in other states by passing the Civil Rights Acts of 1957 (71 Stat. 634), 1960 (74 Stat. 86) and 1964 (78 Stat. 241). These acts were designed to aid in guaranteeing all citizens access to the electoral process by facilitating litigation to enforce voting rights by private parties and by the Attorney General. *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 313.[25]

---

[25] The Civil Rights Act of 1957 authorized the Attorney General to bring suits to prevent denial of the right to vote based on race, color, or national origin. 42 U.S.C. (1958 ed.) 1971(c). The Civil Rights Act of 1960 required that states maintain and produce registration and voting records and authorized the appointment of voting referees where a pattern or practice of discrimination was found. 42 U.S.C. (1958 ed. Supp. V) 1971(e), 1974. While the Civil Rights Act of 1960 was being debated, the Mississippi legislature enacted Miss. Code Ann., § 3209.6 (Supp. 1962), a law specifically authorizing the destruction of registration records. *Voting in Mississippi*, *supra*, at 8. The Civil Rights Act of 1964 limited the power of state registrars to utilize literacy tests to disfranchise black voters. 42 U.S.C. (1970 ed.) 1971(a)(2)(A), (B), and (C) and (c). In 1965 the State of Mississippi repealed Miss. Code Ann., § 3273 (1942), which provided for assistance to illiterate voters. This action was subsequently held to be inconsistent with the congressional intent in passing the Voting Rights Act of 1965, 42 U.S.C. 1973, and the State was ordered to provide assistance for illiterate voters. *United States* v. *State of Mississippi*, 256 F. Supp. 344, 348-349 (S.D. Miss.).

The Civil Rights Acts of 1957, 1960 and 1964 did "little to cure the problem of voting discrimination." *South Carolina* v. *Katzenbach*, *supra*, 383 U.S. at 313. Registration of voting age blacks in Mississippi increased only from 4.4 percent to 6.4 percent between 1954 and 1964. *Ibid.* Because of the history of discrimination in Mississippi and in other states, and because of the relative ineffectiveness of the Civil Rights Acts of 1957, 1960 and 1964, Congress passed the Voting Rights Act of 1965, 79 Stat. 437, as amended, 42 U.S.C. 1971, 1973-1973p. See *South Carolina* v. *Katzenbach*, *supra*.

The Voting Rights Act of 1965 prohibited many of the practices which Mississippi had historically utilized to disfranchise black voters. However, the Voting Rights Act is not self-enforcing and vestiges of the history of racial discrimination in the electoral process still remain. Since 1965, the United States has enforced the provisions of the Voting Rights Act in Mississippi by court action on eight occasions, five by litigated order and three by consent decree.[26] Be-

[26] *United States* v. *State of Mississippi*, 11 Race Rel. L. Rep. 837 (S.D. Miss.). Poll tax held unconstitutional.

United States v. *State of Mississippi*, 256 F. Supp. 344 (S.D. Miss.). Order to recognize federal voter lists.

United States v. *Shannon* (Coahoma County) (N.D. Miss.) Civ. A. No. D.C. 69-28-K, filed May 17, 1969. Names of qualified black candidates ordered on ballot.

[Footnote continued on page 37a]

tween 1965 and 1975 the Attorney General designated more counties in Mississippi as examiner counties, pursuant to 42 U.S.C. 1973d, than in any other state covered by the Voting Rights Act. More than

[26] [Continued]

United States v. *Board of Election Commissioners of Leake County* (S.D. Miss.), Civ. A. No. J-4771, filed October 28, 1970. T.R.O. granted enjoining change to at-large election system without federal review. Consent decree subsequently entered.

United States v. *Humphreys County Board of Election Commissioners* (N.D. Miss.), Civ. A. No. GC-71-141-S, filed December 18, 1971. Consent decree providing that ballots would be counted for any office marked clearly.

United States v. *Marshall County* (N.D. Miss.), Civ. A. No. WC-73-8-K, filed November 1, 1971. Consent decree reassigning misassigned voters and creating election districts.

Stewart v. *Waller*, 404 F. Supp. 206 (N.D. Miss.). Mississippi statute requiring at-large aldermanic elections unconstitutional.

United States v. *Kemper County, Miss.* (S.D. Miss.), Civ. A. No. E-74-65(C), filed November 1, 1974. New election ordered where an election was held without federal review of a change to an at-large election system.

See Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501 before a Subcommittee of the House Committee on the Judiciary, 94th Cong., 1st Sess., Part 1, pp. 198-201 (1975).

Private parties have also obtained relief against violations of the Voting Rights Act by officials in Mississippi. See, *e.g.*, *Allen* v. *State Board of Electors*, 393 U.S. 544; *Perkins* v. *Matthews*, 400 U.S. 379; *Mississippi Freedom Democratic Party* v. *Johnson*, 299 F. Supp. 93 (S.D. Miss.); *Evers* v. *State Board of Elections Commissioners*, 327 F. Supp. 640 (S.D. Miss.), appeal dismissed, 405 U.S. 1001.

half of the 73 counties so designated were located in Mississippi.[27] Moreover, the Attorney General sent more observers to more counties for more electoral contests in Mississippi, pursuant to 42 U.S.C. 1973f, than in any other state covered by the Act, sending a total of 3,766 observers to thirty-one different electoral contests.[28]

---

[27] Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501 *supra*, at 216-217. In 37 of the 38 designated examiner counties in Mississippi, the Attorney General certified that in his judgment the appointment of examiners was necessary to enforce the guarantees of the Fifteenth Amendment (I A 203-205).

[28] Hearings on H.R. 939, H.R. 2148, H.R. 3247, and H.R. 3501 *supra*, at 221. Observers were sent following the Attorney General's determination under 42 U.S.C. 1973f that the presence of observers was necessary to insure the protection of Fifteenth Amendment rights (I A. 211).

APPENDIX B

SUMMARY OF SOURCES AND METHODOLOGY FOR STATISTICS AND MAPS

I. *Summary of Sources and Methodology For Statistics*

The following are the sources and methodology used to derive the statistics cited in this brief's analysis of the district court's reapportionment plan and the alternative plans.

A. *Population*

House and Senate districts are composed of counties, supervisor districts and voting precincts. Populations by race for entire counties are obtained from published census data.[1] Calculations must be made to determine populations for portions of counties, since population statistics are not available for voting precincts or for supervisor districts altered after the 1970 census. The charts which accompany the maps in Appendix C indicate where population statistics are based on calculations and explain how the calculations were made.

Population estimates for House and Senate districts are computed by comparing current county precinct lines[2] with county and city maps showing census

---

[1] U.S. Bureau of the Census, Census of Population: 1970, GENERAL POPULATION CHARACTERISTICS, Final Report PC(1)-B26 Mississippi, Table 34, "Race by Sex, for Counties: 1970."

[2] Maps or descriptions of current voting precincts were obtained from county officials in each county.

enumeration districts.[5] Census computer printouts provide county enumeration district populations by race.[6] Where an entire enumeration district lay within the boundaries of the House or Senate district, the population by race of the enumeration district was taken from the computer printout. Where House or Senate district lines split an enumeration district, an estimate of the portion of the enumeration district lying within the House or Senate district was made. In the City of Greenville (Washington County), some segments of enumeration districts were weighted to reflect population density. For Jackson, Mississippi, census block statistics[7] were used to calculate populations of split enumeration districts. The percent black population of a district represents the district's total black population divided by the district's total population, rounded to the nearest tenth of a percent.

B. *Voting Age Population (VAP)*

Voting age populations (18 years or older) by race for entire counties are obtained from published census data.[8] To find VAP's by race for portions

[5] Maps showing current enumeration districts were obtained from the U.S. Bureau of the Census.

[6] Count 1, File A, 1970 Census—Mississippi Counties, U.S. Bureau of the Census.

[7] U.S. Bureau of the Census, Census of Housing: 1970, BLOCK STATISTICS, Final Report HC(3)-133 Jackson, Mississippi Urbanized Area.

[8] U.S. Bureau of the Census, Census of Population: 1970, GENERAL POPULATION CHARACTERISTICS, Final Report PC(1)-B26 Mississippi, Table 35, "Age by Race and Sex, for Counties: 1970."

of counties, county factors are derived from published census data [9] by the following formula:

$$\text{Black Factor} = \frac{\text{County Black VAP}}{\text{County Black Population}}$$

$$\text{White Factor} = \frac{\text{County White and Other VAP}}{\text{County White and Other Population}}$$

and are applied to population figures as follows:

BVAP = Black Population *X* Black Factor

WVAP = White and Other Population *X* White Factor

To derive a percent black VAP for a House or Senate district, the sum of the BVAPs for all counties and/or portions of counties is divided by the total of all VAPs in the district.

$$\% \text{ BVAP} = \frac{\text{BVAP}}{\text{TVAP}}$$

Percents are rounded to the nearest tenth of a percent.

C. *Deviation*

Deviation indicates the percent by which a district's population varies from an ideal population calculated as follows:

$$\text{Ideal Population} = \frac{\text{Population of Mississippi}^{10}}{\text{Number of Districts}}$$

[9] *Ibid.*

[10] U.S. Bureau of the Census, Census of Population: 1970, GENERAL POPULATION CHARACTERISTICS, Final Re-

Using this formula the ideal population for a House district is:

$$18{,}171 = \frac{2{,}216{,}912}{122}$$

and for a Senate district the ideal is:

$$42{,}633 = \frac{2{,}216{,}912}{52}$$

To find the percent deviation:

$$\%\ \text{Deviation} = \frac{\text{District Population—Ideal Population}}{\text{Ideal Population}}$$

Statistics presented in the district court have been revised in order to correct computation errors. However, these changes do not affect the basis for the United States' objections to the district court's House and Senate plans.

II. *Summary of Sources and Methodology For Maps in Appendix C*

A. *Base Maps*

1. All county and city base maps, with the exception of Hinds County, are official 1970 U.S. Census Bureau—Enumeration District Maps, supplied by the U.S. Department of Commerce, Bureau of the Census. [Note: The district court stated that it would allow reference to any part of the U.S. Census of 1970 (R. Doc. 154, p. 48, Transcript of May 7, 1975 hearing).]

port PC(1)-B26 Mississippi, Table 16, "Summary of General Characteristics: 1970."

2. The Hinds County base maps (App. C-1) are copies of exhibits contained in the record in *Kirksey, et al.* v. *Board of Supervisors of Hinds County, et al.*, of which the district court took judicial notice. (See Brief p. 76 n. 65 *supra.*)

3. The Mississippi State base map, used to illustrate Senate districts for Claiborne and Jefferson Counties (App. C-12), is a reproduction of an official U.S. Census Bureau map as published in "Final Report PC(1) B-26 Mississippi, GENERAL POPULATION CHARACTERISTICS, U.S. Bureau of the Census, Census of Population: 1970."

B. *Majority Black Population Census Enumeration Districts*

Shading indicates census enumeration districts which contained a majority black (50.0-100%) population as of 1970.[9] The statistics relied upon were derived from a census printout (Count 1, File A, 1970 Census—Mississippi Counties, U.S. Bureau of the Census).

C. *District Lines*

Since both the district court's final plan and alternative plans are described by reference to supervisor districts ("beats") and/or voting precincts[10],

[9] Applying county factors, described above, 146 of the 154 majority black enumeration districts have black voting age population majorities.

[10] Although the district court did not take judicial notice of precinct lines, it is implicit in its use of such precincts in

the boundaries of the various districts were drawn by transposing onto the base maps current beat and precinct lines obtained from county officials."

The Court's final Senate plan for Hinds County follows the same boundaries as the five supervisor districts approved in *Kirksey* v. *Board of Supervisors of Hinds Co., et al.* (III A. 235). The map of the district court's plan is a reproduction of a map in the *Kirksey* record (Ex. P-44) which delineates current supervisor districts and highlights majority black population census enumeration districts in the City of Jackson. The alternative plan is a reproduction of a similar map from the *Kirksey* record, on which were drawn the district lines, by the method described in C, *supra*.

---

drawing districts. Moreover, these lines are required by Mississippi law to be officially recorded, Miss. Code §§ 23-5-13, and are judicially noticeable at any stage of the proceedings. Rule 201, Federal Rules of Evidence.

[11] In the case of *Warren County*, precinct maps were extracted from the court record in *U.S.* v. *Board of Supervisors of Warren County* (III A. 257).

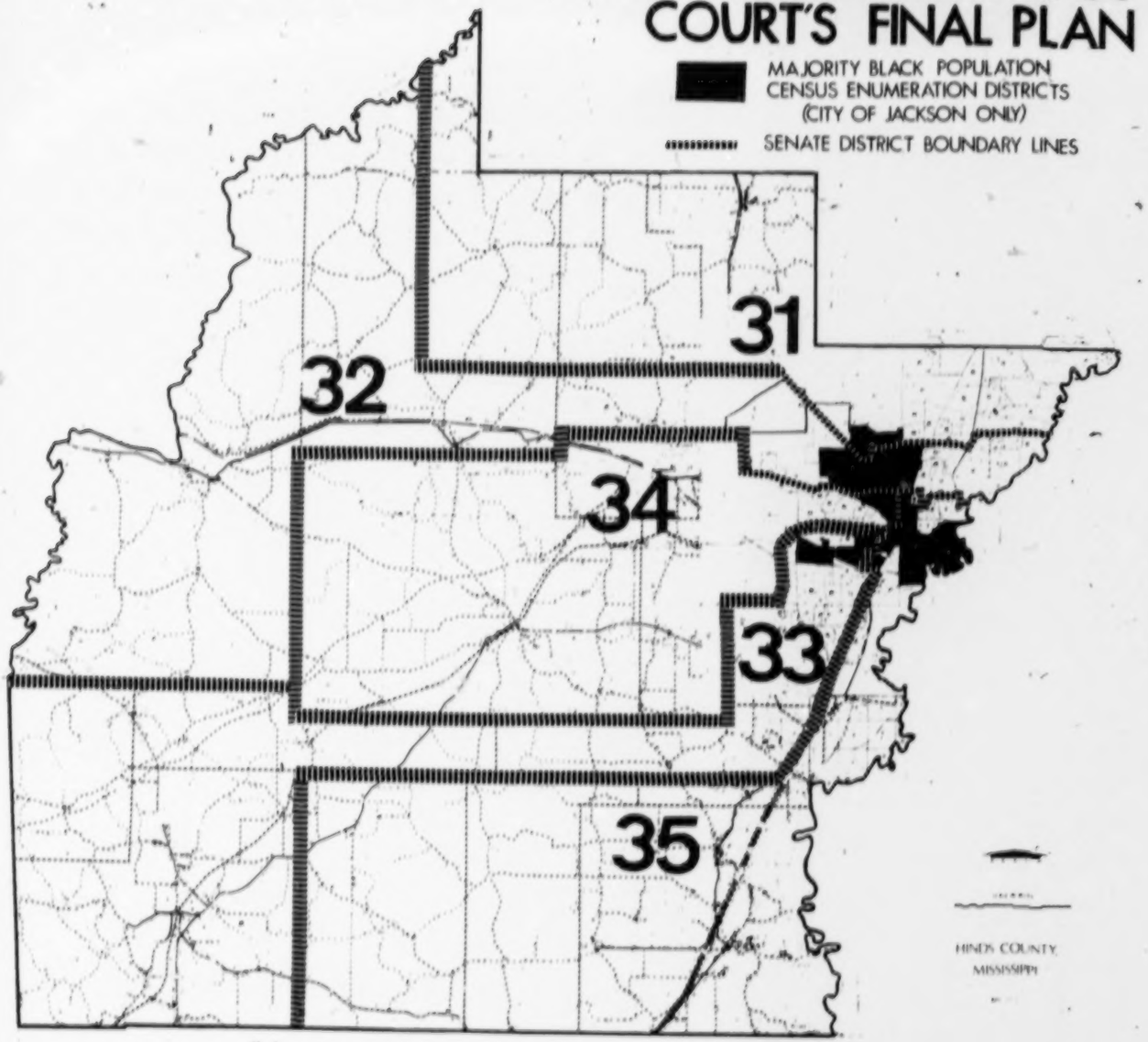
APPENDIX C

Maps and Statistical Charts Comparing Certain Districts in the Court's Final Reapportionment Plan and Alternative Plans

HINDS COUNTY SENATE DISTRICTS 31-35 COURT'S FINAL PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS (CITY OF JACKSON ONLY)

SENATE DISTRICT BOUNDARY LINES

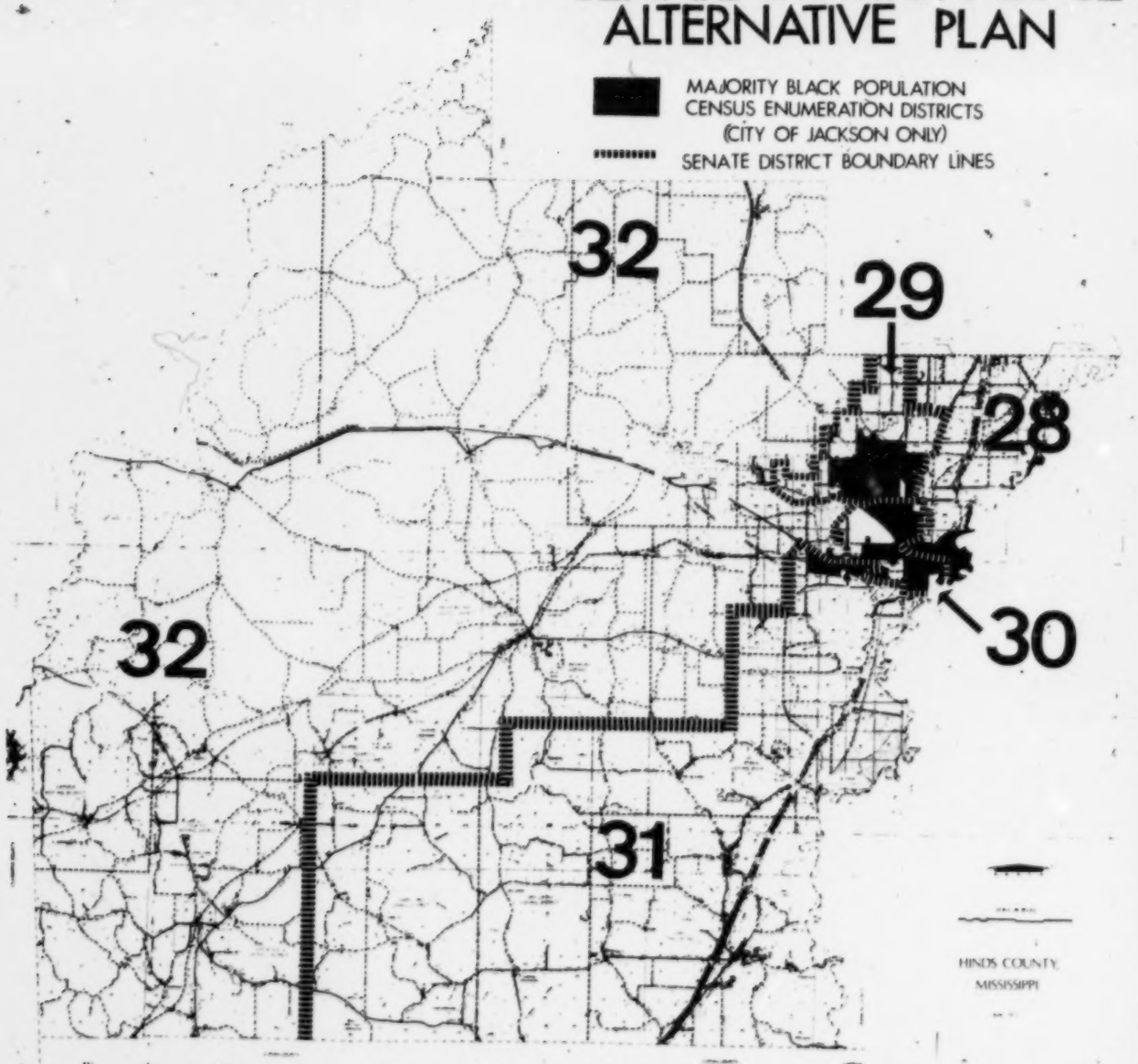


HINDS COUNTY MISSISSIPPI

HINDS COUNTY SENATE DISTRICTS 28-32 ALTERNATIVE PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS (CITY OF JACKSON ONLY)

SENATE DISTRICT BOUNDARY LINES



HINDS COUNTY MISSISSIPPI

APPENDIX C-2

Hinds County

COURT'S FINAL PLAN *

Senate District	Description
31	Hinds County: Beat (Supervisor District) 1
32	Hinds County: Beat (Supervisor District) 2
33	Hinds County: Beat (Supervisor District) 3
34	Hinds County: Beat (Supervisor District) 4
35	Hinds County: Beat (Supervisor District) 5

* Fnial Judgment of November 18, 1976 (III A. 235).

Hinds County

ALTERNATIVE PLAN *

Senate District	Description
28	Hinds County: the Precincts of Twin Pines, Liberty Grove, and Precincts Nos. 1, 5, 8, 9, 14-17, 32-38, 42-45, and 79-82
29	Hinds County: Precincts Nos. 11-13, 21-31, 39-41, and 83
30	Hinds County: Precincts Nos. 2, 4, 6, 10, 18-20, 47, 50-58, 63, and 64
31	Hinds County: Alternative I—Precincts 49, 66-77, Byram, Old Byram, Red Hill, Forrest Hill, Woodville Heights, Hickory, Fairfax, Terry, Dry Grove, Chapel Hill, and Briarcliff
32	Hinds County: Alternative I—the Precincts of Tinnin, Pocahontas, Cynthia, Presidential Hills, North Clinton, Clinton Nos. 2-4, Van Winkle No. 1, Midway, Flag Chapel, Brownsville, Bolton, Edwards, Cayuga, Utica Nos. 1 and 2, Learned, Raymond Nos. 1 and 2, Clinton No. 1, Van Winkle No. 2, and Precincts Nos. 59-62

* Senate Restricted Fractionalization Plan: Ex. C-1 to Alternative Plans Submitted by the United States Pursuant to Order of July 11, 1975, filed October 31, 1975 (III A. 50-51).

Hinds County

COURT PLAN *

Senate District	Total Population	Nonwhite Population	% Nonwhite	Black VAP	% Black VAP	% Deviation
31	42,948	12,695	29.5	6,957	25.3	+0.7
32	43,061	22,984	53.4	12,595	48.0	+1.0
33	43,199	11,962	27.7	6,555	23.5	+1.3
34	43,010	13,750	32.0	7,535	27.5	+0.9
35	42,755	23,066	54.0	12,640	48.6	+0.3

ALTERNATIVE PLAN **

Senate District	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
28	42,042	2,030	4.8	1,113	3.9	—1.4
29	40,946	26,634	65.0	14,598	60.0	—4.0
30	46,094	30,555	66.3	16,747	61.3	+8.1
31	41,635	6,236	15.0	3,418	12.4	—2.3
32	44,256	18,605	42.0	10,197	36.9	+3.8

* % deviation obtained from the Order of August 24, 1976 (III A. 105). All other court statistics were provided in the district court's opinion in *Kirksey* v. *Board of Supervisors of Hinds Co., Kirksey* App., pp. 534, 543, 545.

** Senate Restricted Fractionalization Plan, Ex. C-1 to United States' Alternative Plans filed October 31, 1975 (III A. 50-51). Statistics calculated by the United States from estimates based on census enumeration district data.

WARREN COUNTY
HOUSE DISTRICTS 53-55
COURT'S FINAL PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

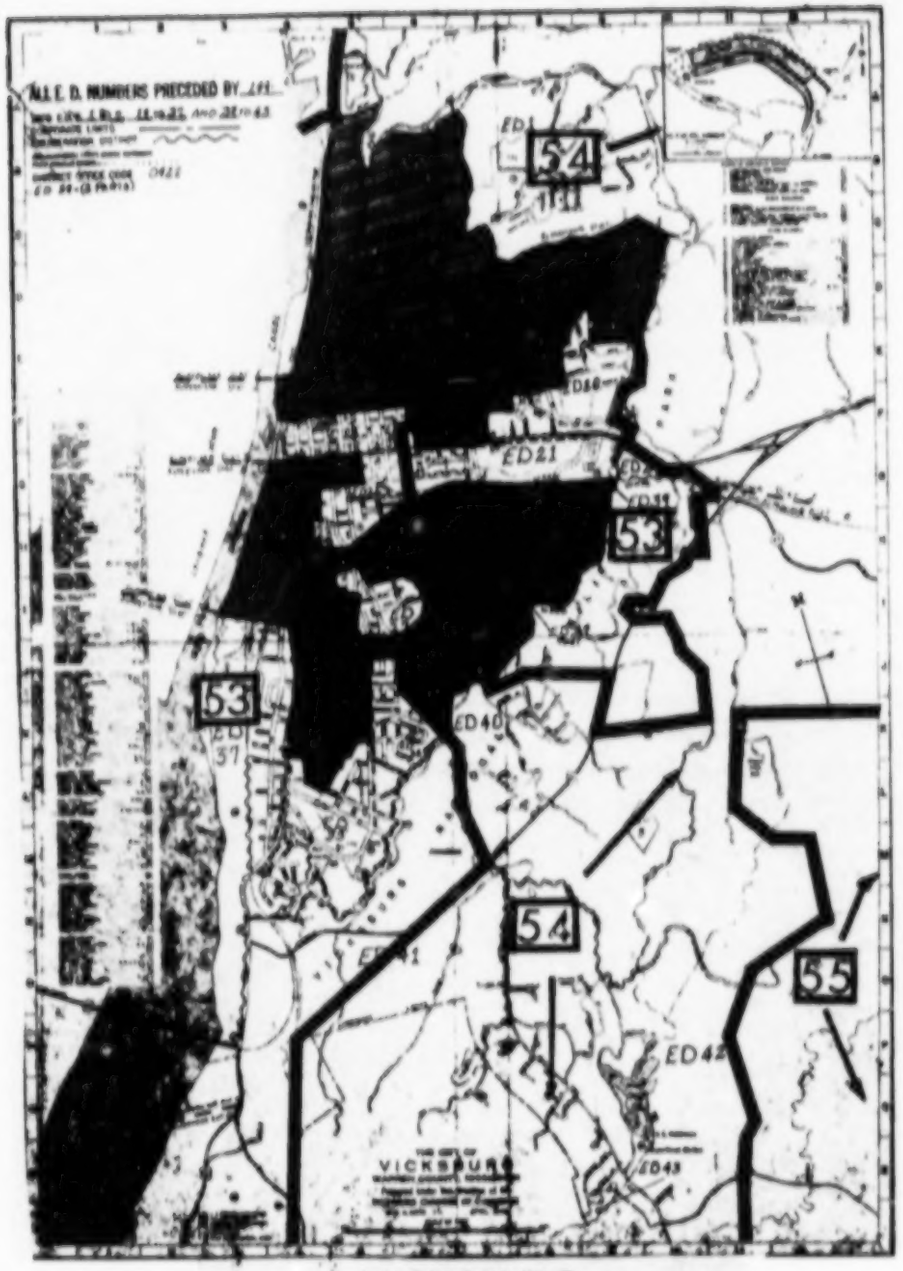
HOUSE DISTRICT BOUNDARY LINES

WARREN COUNTY
HOUSE DISTRICTS 53-55
ALTERNATIVE PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

HOUSE DISTRICT BOUNDARY LINES

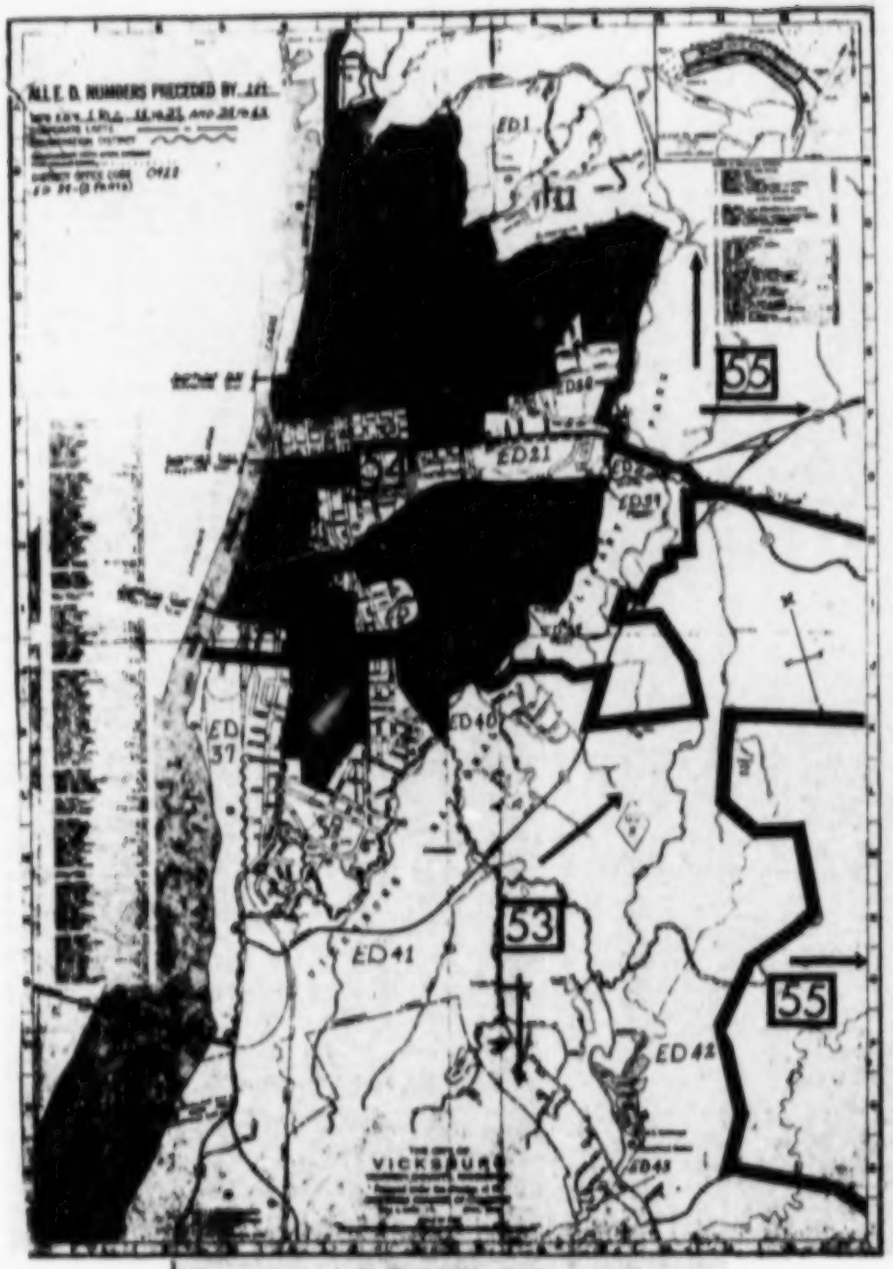
APPENDIX C-4



VICKSBURG
HOUSE DISTRICTS 53-55
COURT'S FINAL PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

HOUSE DISTRICT BOUNDARY LINES



VICKSBURG
HOUSE DISTRICTS 53-55
ALTERNATIVE PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

HOUSE DISTRICT BOUNDARY LINES

APPENDIX C-5

Warren County

COURT'S FINAL PLAN *

House District	Description
53	Warren County: the Precincts of Redbone, Yokena, Jett, Fire Station No. 7, American Legion (Blackburn), and St. Aloysius
54	Warren County: the Precincts of Culkin, Beechwood, Jonestown, Kings, Cedar Grove, Auditorium, and Central Fire Station
55	Warren County: the Precincts of Oak Ridge, Bovina, Redwood, Walters, Brunswick, Tingle, and Goodrum Yazoo County: the Precincts of Dover, East Bentonia, West Bentonia, Mechanicsburg, Phoenix, Satartia, Deasonville, Fugates, Valley, Enola, Fairview, and Holly Bluff

* Order of December 21, 1976 (III A. 281-282).

Warren County *

ALTERNATIVE PLAN **

House District	Description
53	Warren County: the Precincts of Yokena, Jett, Jonestown, Fire Station No. 7, Redbone, Goodrum, and Beechwood
54	Warren County: the Precincts of American Legion, Central Fire Station, St. Aloysius, Auditorium, Walters, and Brunswick
55	Warren County: the Precincts of Tingle, Culkin, Bovina, Kings, Cedar Grove, Oak Ridge, and Redwood; Yazoo County: the Precincts of Satartia, Phoenix, Mechanicsburg, East Bentonia, West Bentonia, Dover, Benton, Deasonville, and Fugates

* Redistricting of districts 53-55 would also require redistricting of districts 47 and 56 (Sharkey, Humphreys and part of Yazoo Counties). Alternative districts 47 and 56 are described in Ex. B-5 to Plaintiff's Supplement to Motion to Alter or Amend Judgment, filed October 8, 1976 (III A. 196).

** Plaintiffs' Suggested Alternative House Districts, Ex. B-5 to Plaintiffs' Supplement to Motion to Alter or Amend Judgment, filed October 8, 1976 (III A. 196).

Warren County

	COURT PLAN *				UNITED STATES' ANALYSIS OF COURT PLAN **					
House District	Total Population	Black Population	% Black	% Deviation	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
53	16,968	7,207	42.5	—6.6	16,963	7,207	42.5	4,152	39.4	—6.6
54	17,559	7,348	41.8	—3.4	17,559	7,348	41.8	4,233	39.2	—3.4
55	17,383	7,599	43.7	—4.3	17,786	7,897	44.4	4,340	40.3	—2.1

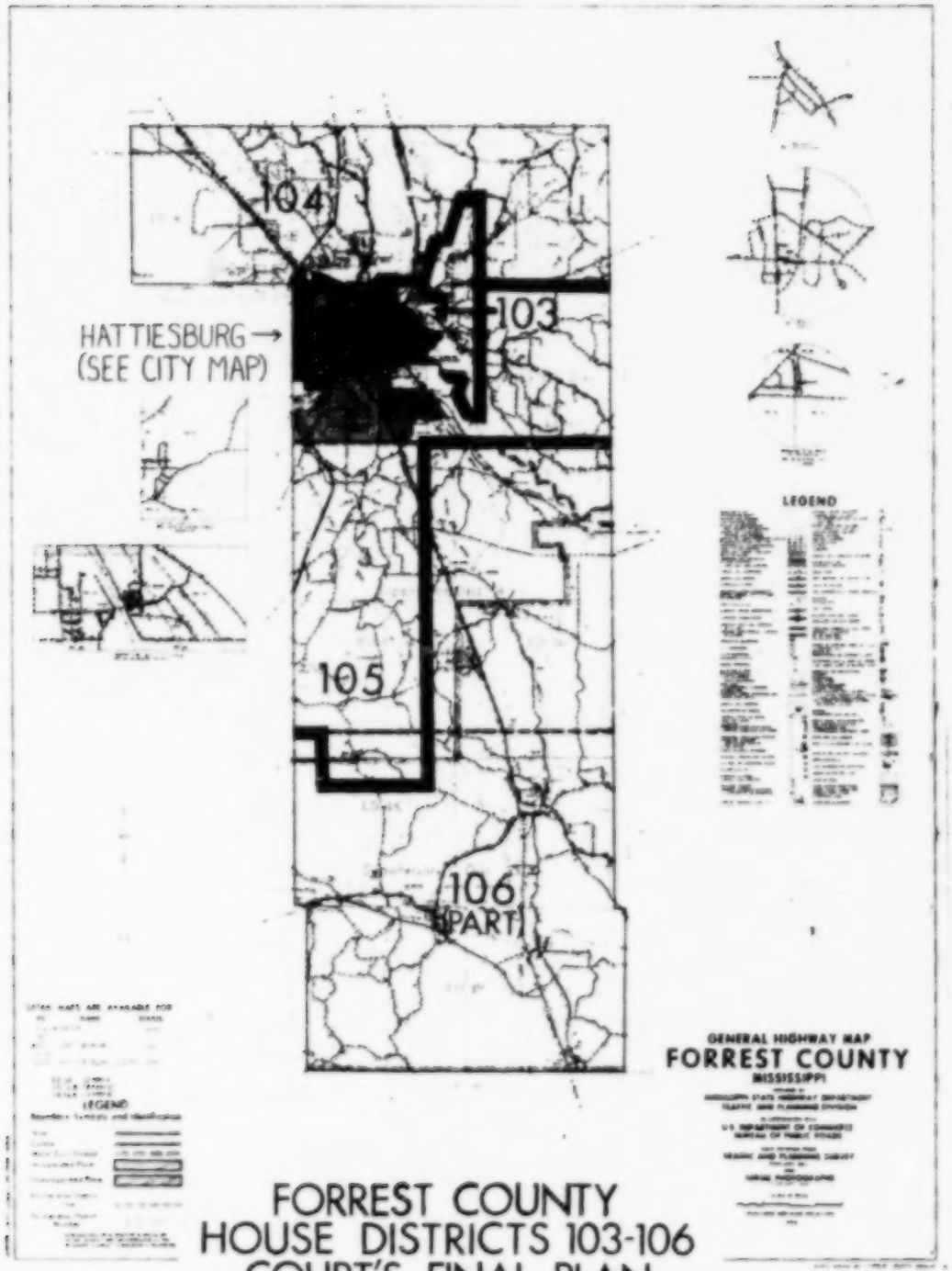
	ALTERNATIVE PLAN ***					
House District	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
53	16,788	4,706	28.0	2,711	25.8	—7.6
54	17,643	10,459	59.3	6,025	56.6	—2.9
55	16,965	6,691	39.4	3,676	29.0	—6.4

* Statistics provided by the Court in its Order Amending Judgment of December 21, 1976 (III A, 281-282).

** Statistics calculated by the United States from published census data for Sharkey and Humphreys Counties; Court Order of December 21, 1976, for Sharkey County, Silver City Precinct; Plaintiffs' estimates derived from census enumeration districts for Yazoo County; and Plaintiffs' estimates for Warren County which were accepted by the Special Master on December 8, 1976 (III A. 273-274).

*** Statistics calculated by the United States from published census data for Sharkey and Humphreys Counties; Plaintiffs' estimates derived from census enumeration districts for Yazoo County; and Plaintiffs' estimates for Warren County which were accepted by the Special Master in his report of December 8, 1976 (III A. 273-274).

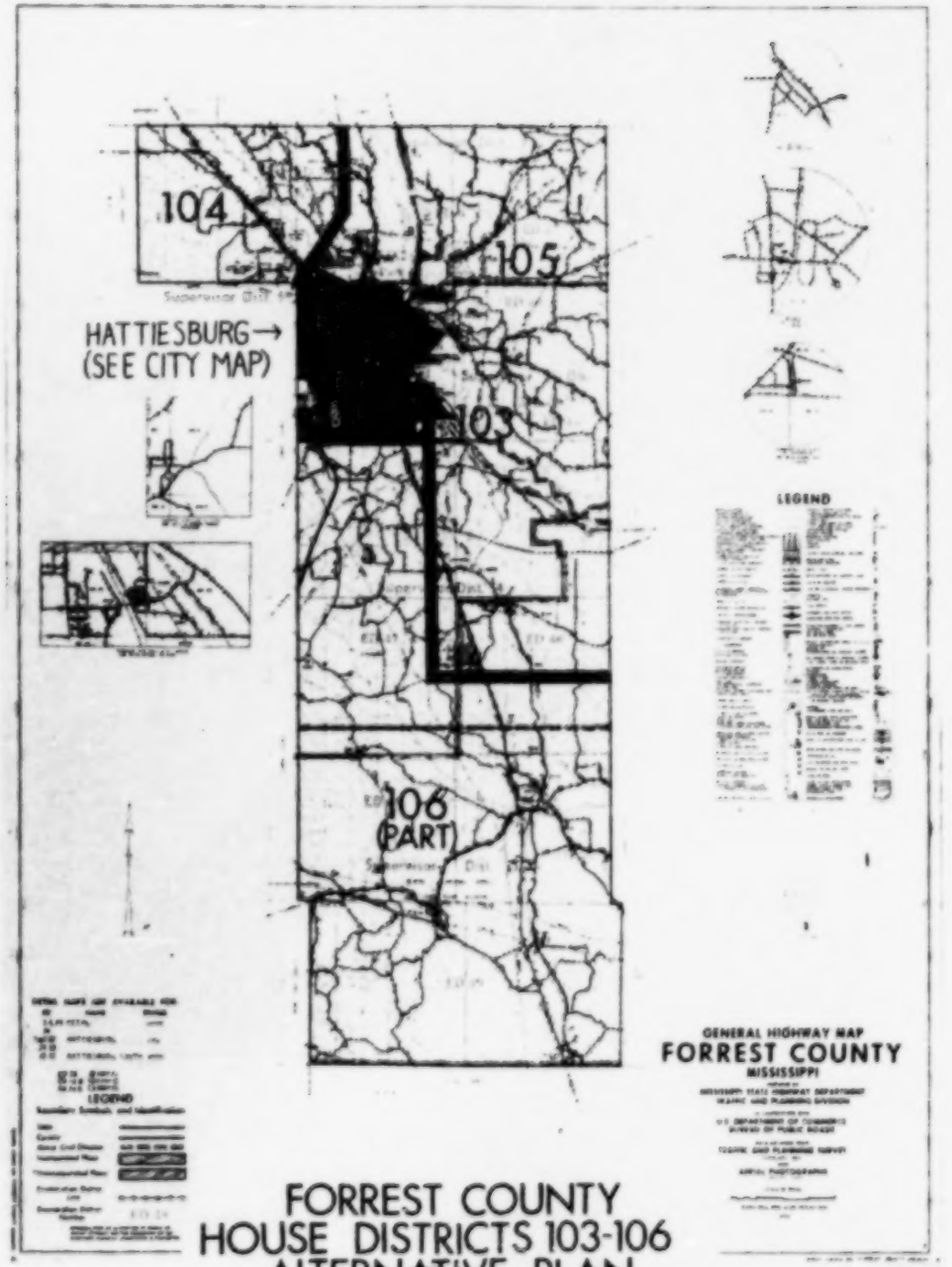
APPENDIX C-6



FORREST COUNTY
HOUSE DISTRICTS 103-106
COURT'S FINAL PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

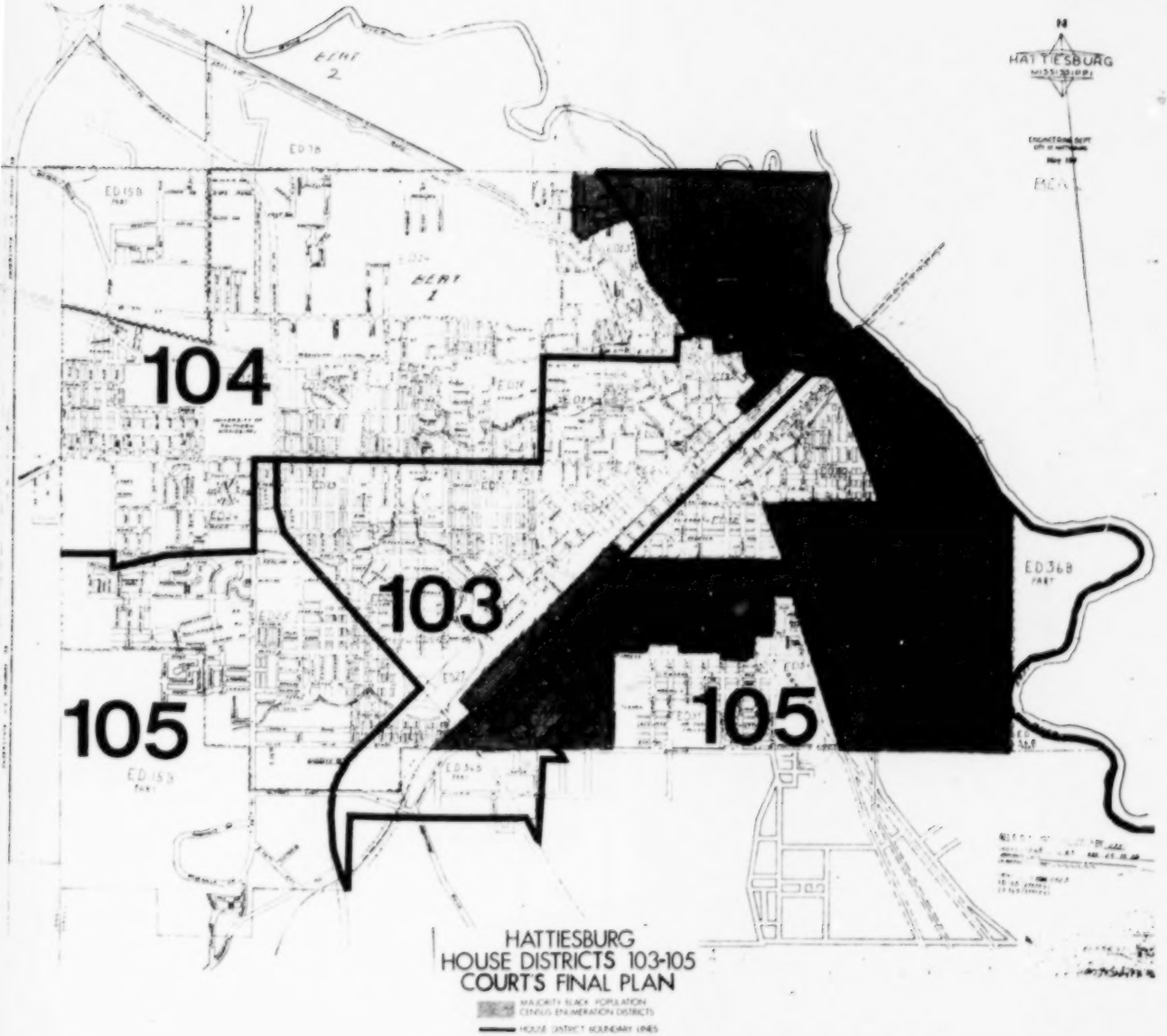
HOUSE DISTRICT BOUNDARY LINES

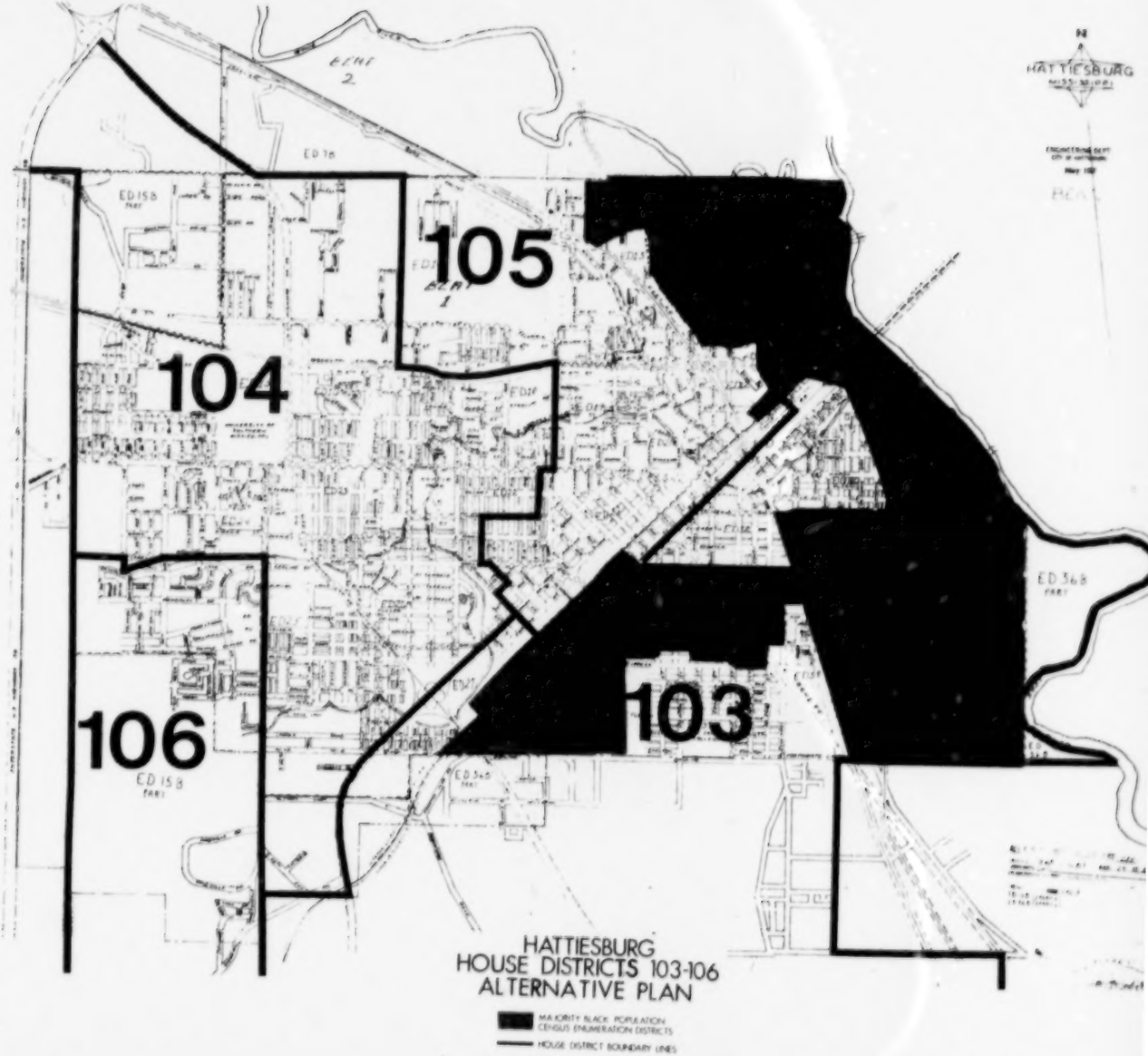


FORREST COUNTY
HOUSE DISTRICTS 103-106
ALTERNATIVE PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

HOUSE DISTRICT BOUNDARY LINES


HATTIESBURG
104
103
105
105
HATTIESBURG
HOUSE DISTRICTS 103-105
COURTS FINAL PLAN
MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS
HOUSE DISTRICT BOUNDARY LINES


HATTIESBURG
105
104
106
103
HATTIESBURG
HOUSE DISTRICTS 103-106
ALTERNATIVE PLAN
MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS
HOUSE DISTRICT BOUNDARY LINES

APPENDIX C-8

Forrest County and Adjoining Counties

COURT'S FINAL PLAN *

House District	Description
103	Forrest County: the Precincts of Lillie Burney, Woodley School, Jones School, Petal High, East Bowie, Petal-Harvey, Camp School, and Hawkins Junior High
104	Forrest County: the Precincts of Blair High, Eatonville, Glendale, Petal-Leeville, Rawls Springs, Macedonia, Davis School, Grace Christian, and Pinecrest
105	Forest County: the Precincts of Central School, Dixie School, Westside, Eaton School, Sunrise, Walthall, Dixie Pine, Rowan High, William Carey, and Thames
106	Forrest County: the Precincts of Forrest County A.H.S., McCallum, McLaurin, Brooklyn, Carnes, and Maxie; Pearl River County: the Precincts of Poplarville East, Poplarville West, Byrd Line, Hickory Grove, Gum Pond, Wolf River, Oak Hill, Hillsdale, Fords Creek, Buck Branch, White Sand, Mill Creek, Derby, Progress, Silver Run, Steep Hollow, Savannah, McNeill, and Caesar; Stone County: Beat 2

* Order of September 8, 1976 (III A. 130-131).

Forrest County and Adjoining Counties

ALTERNATIVE PLAN *

House District	Description
103	Forrest County: Beat 1—the Precincts of Lillie Burney and Central School; Beat 2—the Precinct of Jones; Beat 3—the Precincts of East Bowie, Eaton, and Walthall; Beat 4—the Precincts of William Carey and Rowan
104	Forrest County: Beat 1—the Precincts of Blair, Woodley, and West Side; Beat 2—the Precincts of Rawls Springs and Eatonville; Beat 5—the Precincts of Grace Christian and Pinecrest
105	Forrest County: Beat 2—the Precincts of Petal High School, Petal-Leeville, and Glendale; Beat 3—the Precincts of Macedonia, Sunrise, and Petal-Harvey School; Beat 4—the Precincts of Camp and Hawkins; Beat 5—the Precincts of Davis, McLaurin, McCallum, and Dixie Pine
106	Forrest County: Beat 1—the Precinct of Dixie; Beat 4—the Precinct of Forrest County A.H.S.; Beat 5—the Precincts of Brooklyn, Carnes, Maxie, and Thames. Pearl River County: the Precincts of Poplarville East, Poplarville West, Byrd Line, Hickory Grove, Gum Pond, Wolf River, Oak Hill, Hillsdale, Fords Creek, Buck Branch, White Sand, Mill Creek, Derby, Progress, Silver Run, Steep Hollow, Savannah, McNeill, and Caesar; Stone County: Beat 2

* Ex. F to Objections of the United States to Plans for the Redistricting of the Mississippi Senate and House of Representatives Contained in the Court Orders of August 24 and September 8, 1976, filed October 22, 1976 (III A. 218-219).

Forrest County and Adjoining Counties

COURT PLAN *

UNITED STATES' ANALYSIS OF COURT PLAN **

House District	Total Population	% Deviation	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
103	17,504	—3.7	17,885	5,130	28.7	2,910	24.5	—1.6
104	17,555	—3.4	18,552	1,097	5.9	622	4.8	+2.1
105	17,799	—2.0	18,560	7,492	40.4	4,249	35.4	+2.1
106	17,377	—4.4	15,238	2,410	15.8	1,305	13.8	—16.1

ALTERNATIVE PLAN **

House District	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
103	16,582	10,956	66.1	6,214	61.1	—8.7
104	16,962	319	1.9	181	1.5	—6.65
105	19,428	2,668	13.7	1,513	11.4	+6.9
106	17,263	2,186	12.7	1,178	10.6	—5.0

* Statistics provided by the court in its Order of September 8, 1976 (III A. 130-131).

** Statistics calculated by the United States from estimates based on census enumeration district data. Black population percentages derived from U.S. estimates for Pearl River and Stone Counties were applied to the respective total population statistics provided by the Court in order to obtain black population figures for each county.

WASHINGTON COUNTY
HOUSE DISTRICTS 32-35
COURT'S FINAL PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

HOUSE DISTRICT BOUNDARY LINES

WASHINGTON COUNTY
HOUSE DISTRICTS 32,33,35
ALTERNATIVE PLAN

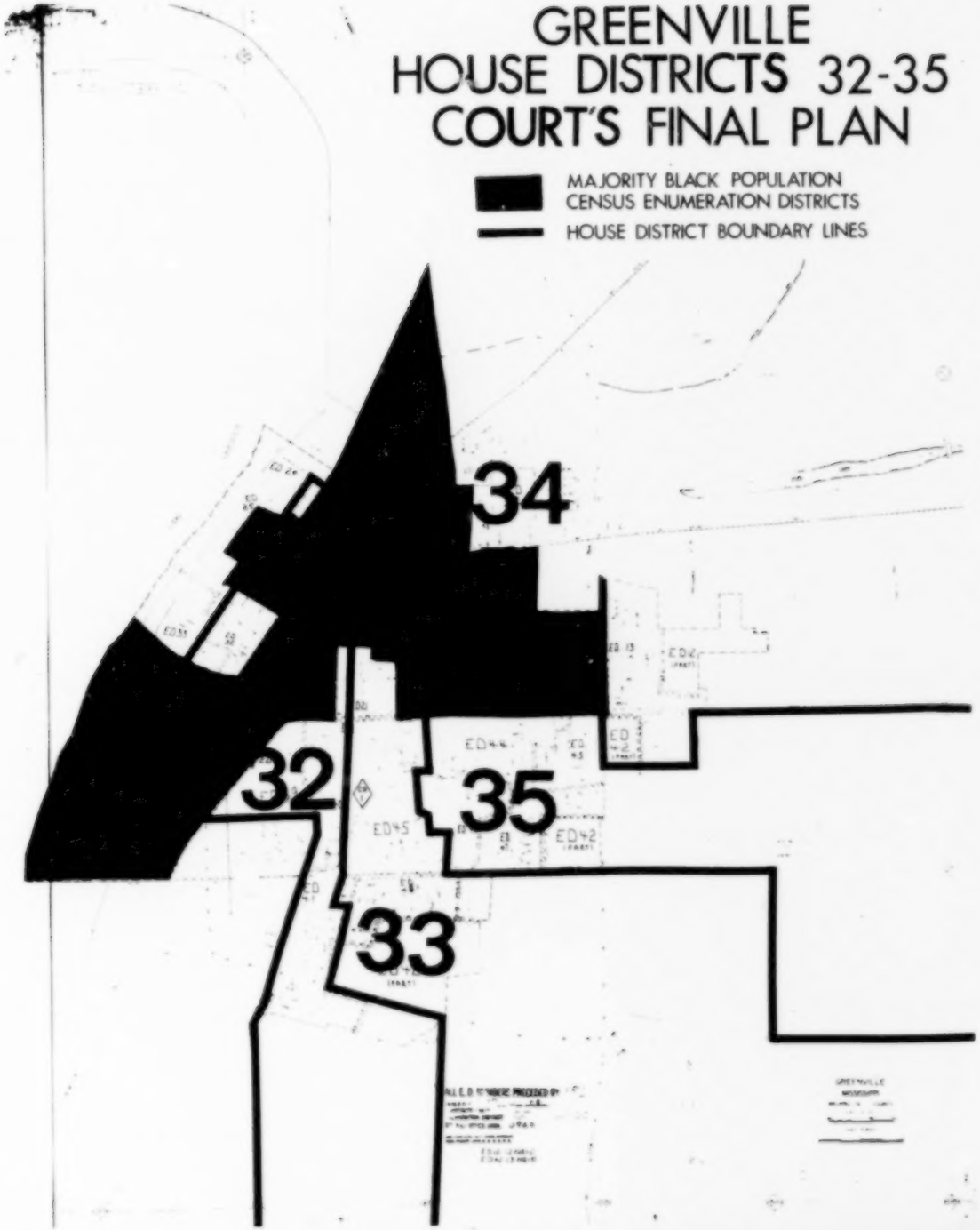
MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

HOUSE DISTRICT BOUNDARY LINES

GREENVILLE HOUSE DISTRICTS 32-35 COURT'S FINAL PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

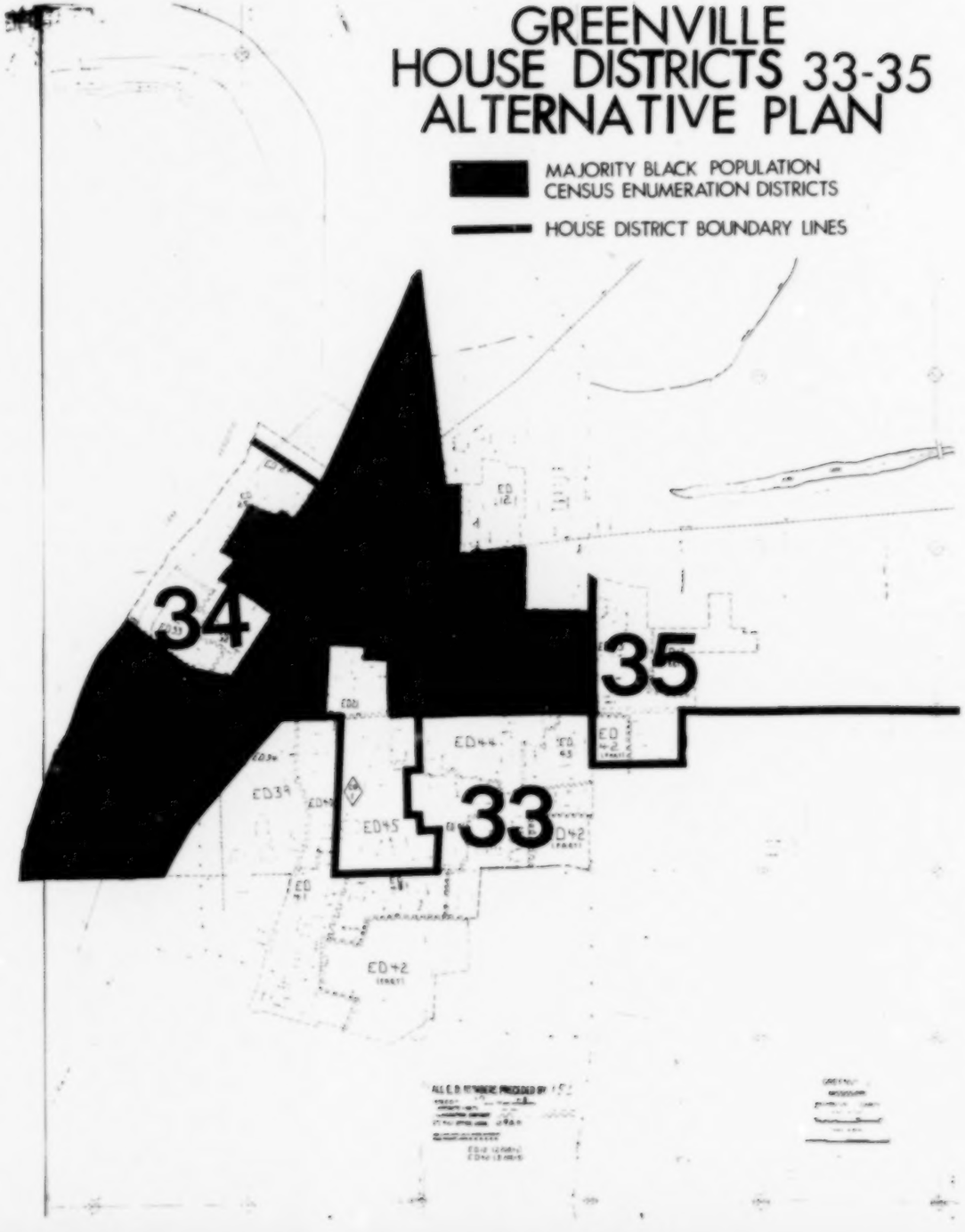
HOUSE DISTRICT BOUNDARY LINES



GREENVILLE HOUSE DISTRICTS 33-35 ALTERNATIVE PLAN

MAJORITY BLACK POPULATION CENSUS ENUMERATION DISTRICTS

HOUSE DISTRICT BOUNDARY LINES



APPENDIX C-11

Washington and Issaquena Counties

COURT'S FINAL PLAN *

House District	Description
32	Issaquena County;
	Washington County: Beat 1, and the Precinct of Avon
33	Washington County: the Precincts of Ward Center, Community Center, Arcola and Hollandale
34	Washington County: Beat 3, and the Precinct of New County Garage
35	Washington County: the Precincts of Darlove, Bourbon, County Recreation Center, Industrial College, Leland Health Clinic, and Leland Light Plant

* Final judgment of November 18, 1976 (III A. 239).

Washington and Issaquena Counties

ALTERNATIVE PLAN *

House District	Description
32	Issaquena County;
	Washington County: the Precincts of Glen Allan, Arcola, Leland City Hall, Hollandale, Darlove, and Bourbon
33	Washington County: the Precincts of Episcopal Church, Wayside Laundry, Ward's Recreation Center, Avon, Italian Club, and County Recreation Center
34	Washington County: the Precincts of Extension Building, Community Center, Brent Center, and Police Station
35	Washington County: the Precincts of County Barn, Leland Light Plant, American Legion, and Industrial Center

* Plaintiffs' Suggested Alternative House Districts, Ex. B-3, Alternative Number 2, Plaintiffs' Supplement to Motion to Alter or Amend Judgment, filed October 8, 1976 (III A. 194).

Washington and Issaquena Counties

COURT PLAN *

House District	Total Population	% Deviation
32	18,205	+0.2
33	17,409	—4.2
34	19,472	+7.2
35	18,232	+0.3

UNITED STATES' ANALYSIS OF COURT PLAN **

House District	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
32	17,329	10,159	58.6	5,180	53.1	—4.6
33	17,136	9,639	56.2	4,949	50.9	—5.7
34	20,022	11,061	55.2	5,679	49.9	+10.2
35	18,831	9,299	49.4	4,774	47.1	+3.6

ALTERNATIVE PLAN ***

House District	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
32	18,565	12,097	65.2	6,175	59.9	+2.2
33	18,610	4,672	25.1	2,399	21.3	+2.4
34	17,534	11,657	66.5	5,985	61.6	—3.5
35	18,609	11,732	63.0	6,023	57.9	+2.4

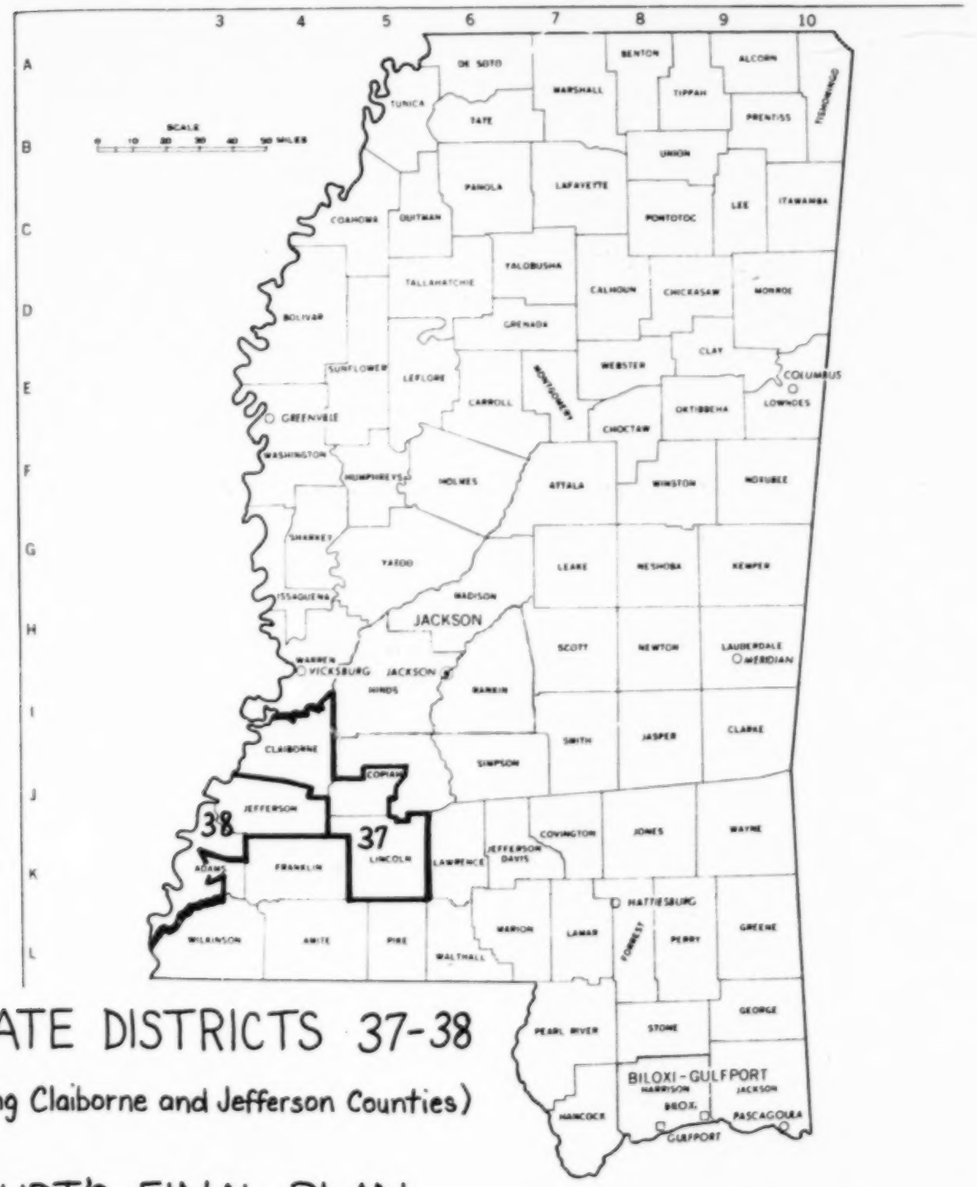
* Statistics provided by the Court in its Order of September 8, 1976 (III A. 122).

** Statistics calculated by the United States from published census data for Issaquena County, and United States' estimates based on census enumeration district data for Washington County.

*** Statistics calculated by the United States from district total population figures provided by Plaintiffs for Alternative No. 2 of Plaintiffs' Supplement to Motion to Alter or Amend Judgment, filed October 8, 1976 (III A. 194).

MISSISSIPPI

Counties, Standard Metropolitan Statistical Areas, and Selected Places



SENATE DISTRICTS 37-38

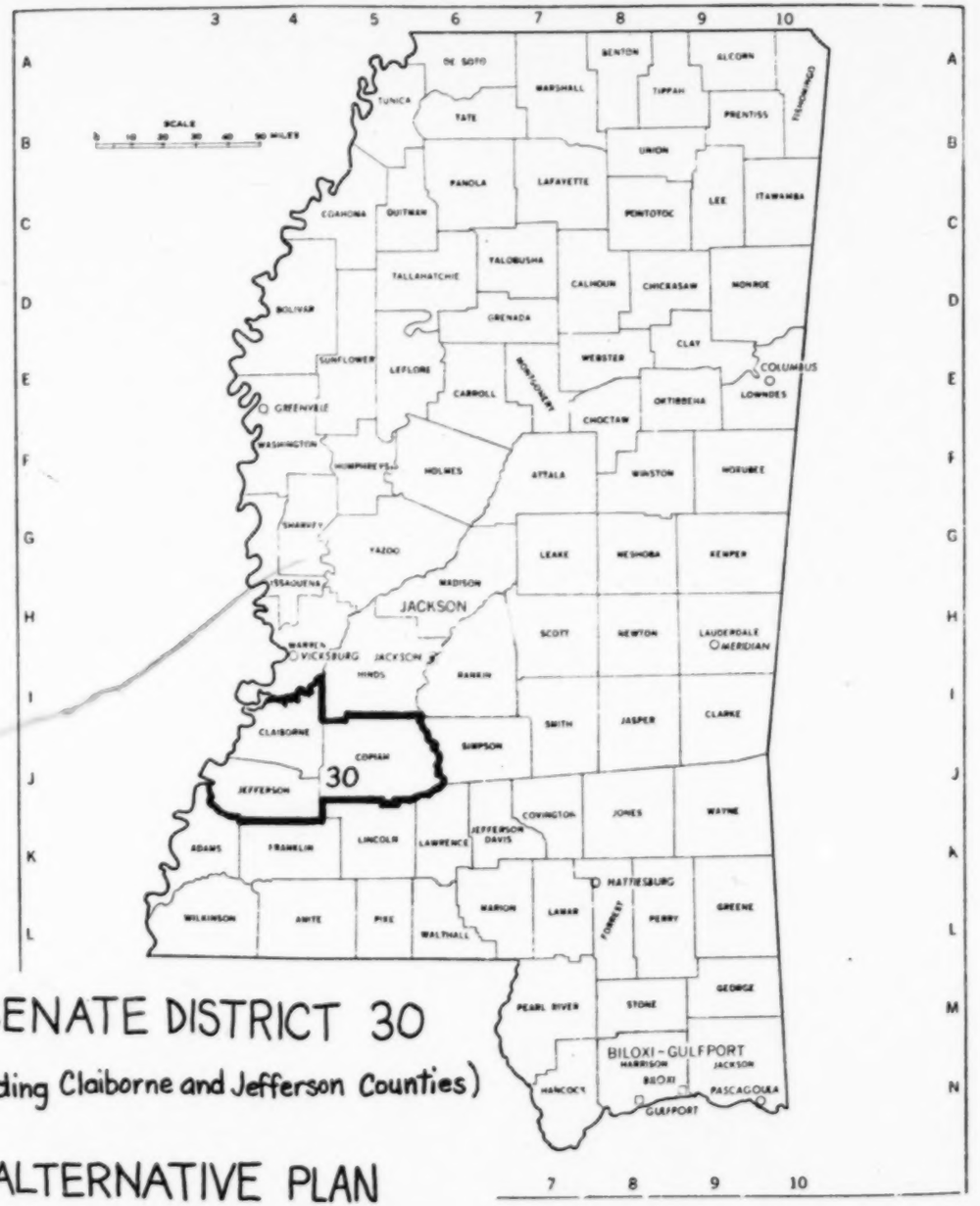
(including Claiborne and Jefferson Counties)

COURT'S FINAL PLAN

SENATE DISTRICT BOUNDARY LINES

MISSISSIPPI

Counties, Standard Metropolitan Statistical Areas, and Selected Places



SENATE DISTRICT 30

(including Claiborne and Jefferson Counties)

ALTERNATIVE PLAN

SENATE DISTRICT BOUNDARY LINES

APPENDIX C-13

Claiborne, Jefferson and Adjoining Counties

COURT'S FINAL PLAN *

Senate District	Description
37	Claiborne County; Lincoln County; and Copiah County: Beat 3
38	Jefferson County; and Adams County: Beats 1, 2, 4, 5

* Final Judgment of November 18, 1976 (III A. 235).

Claiborne, Jefferson and Adjoining Counties

ALTERNATIVE PLAN *

Senate District	Description
30	Claiborne, Jefferson, and Copiah Counties

* Senate County Boundary Plan, Ex. A-1 to Alternative Plans Submitted by the United States Pursuant to Order of July 11, 1975, filed October 31, 1975 (III A. 28).

Claiborne, Jefferson and Adjoining Counties

	Court Plan *		United States' Analysis of Court Plan **					
Senate District	Total Population	% Deviation	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
37	41,233	—3.3	41,209	18,318	44.5	10,281	39.6	—3.3
38	39,082	—8.3	38,525	21,818	56.6	11,893	52.1	—9.6

Alternative Plan ***

Senate District	Total Population	Black Population	% Black	Black VAP	% Black VAP	% Deviation
30	44,130	26,955	61.1	14,847	55.0	+3.5

* Statistics provided by the court in its Order of August 24, 1976 (III A. 105).

** Statistics calculated by the United States using published census data for Jefferson, Claiborne, and Lincoln Counties and United States' estimates based on census enumeration data for Adams and Copiah counties.

*** Statistics calculated by the United States using published census data.

APPENDIX D

42 U.S.C. 1971(a)(1) and (c) provide:

(a)(1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

* * * * *

(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. If in any such proceeding literacy is a relevant fact there shall be a rebuttable presumption that any person who has not been adjudged an incompetent and who has completed the sixth grade in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico where instruction is carried on predominantly in the English language, possesses suffi-

cient literacy, comprehension, and intelligence to vote in any election. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.

42 U.S.C. (Supp. V) 1973 provides:

No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title.

42 U.S.C. 1973j(d) provides:

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 1973, 1973a, 1973b, 1973c, 1973e, 1973h, 1973i, or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including

an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them (1) to permit persons listed under this subchapter to vote and (2) to count such votes.

42 U.S.C. (Supp. V) 2000h-2 provides:

Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constition on account of race, color, religion, sex or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1977 228323 54